

DRAFT #1
February 25, 2018

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 190, NR 191, NR 192, NR 195 and NR 198; and to **create** NR 193 relating to the administration of cost-sharing grant programs for lake and river planning, monitoring, and protection, and aquatic invasive species.

WY-18-15

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: ss. 281.68, 281.69, 281.70, and 23.22 (2) (c), Stats.

2. Statutory Authority: ss. 281.68, 281.69, 281.70, 23.22 (2) (c), and 227.11 (2) (a), Stats.

3. Explanation of Agency Authority: This order implements s. 281.68, Stats., which directs the department to promulgate rules to establish and administer a cost-sharing program to award grants to eligible recipients for lake management planning projects, projects to provide information and education on the use of lakes and natural lake ecosystems and on the quality of water in lakes and the quality of natural lake ecosystems, and to award contracts to create and support a statewide lake monitoring and protection network. The rule also establishes a procedure to determine eligible activities and participants in the statewide lake monitoring and protection network, defines minimum and maximum membership fees for qualified lake associations, and allows the department to approve lake management plan recommendations for funding under a lake management grant as authorized under s. 281.69, Stats.

This order implements s. 281.69, Stats., which directs the department to promulgate rules to establish and administer a cost-sharing program to award grants to eligible recipients for lake management projects that improve or protect the quality of water in lakes or the quality of natural lake ecosystems, and for lake classification projects that will classify lakes by use and implement protection activities for the lakes based on their classification. The rule also allows the department to award contracts for lake classification technical assistance. Section 281.69, Stats. also directs the department to promulgate rules to administer and determine eligible recipients and activities for lake management projects and lake classification projects.

This order implements s. 281.70, Stats., which directs the department to establish and administer a cost-sharing program to award grants to eligible recipients for river planning projects and river management projects. The rule designates eligible activities for planning, management and education, and the types of natural riverine ecosystems that are eligible for funding, and allows the department to approve river management plan recommendations for funding under s. 281.70, Stats.

This order implements s. 23.22 (2) (c), Stats., which directs the department to promulgate rules to establish a procedure to award cost-sharing grants to control invasive species. The rule establishes the criteria for determining eligible projects and eligible public and private grant recipients, allowing cash and non-cash contributions as eligible cost share, and considering the recommendations of the Invasive Species Council.

The department has authority to promulgate rules under s. 227.11 (2) (a), Stats., to administer the statutory requirements in ss. 281.68, 281.69, 281.70, 281.71, 281.72, and 23.22 (2) (c), Stats.

4. Related Statutes or Rules:

Section 281.68 (3), Stats., directs the department to develop rules to administer a lake management planning grant and contract program to provide information and education on the use of lakes and lake ecosystems and water and ecosystem quality, improve water quality assessment, and develop plans to prevent pollution and protect and improve lakes.

Section 281.69 (3), Stats., directs the department to develop rules for a lake management grant program that will improve or protect lakes and lake ecosystems quality, classify lakes by use, and implement protection activities for the lakes based on their classification.

Section 281.70 (2), Stats., directs the department to develop rules for a river protection grant program to provide grants for planning and management projects to protect or improve the ways rivers are used, the quality of water in rivers and riverine ecosystems, and/or the fish populations, aquatic life or fish habitat in rivers.

Section 23.22 (2) (c), Stats., directs the department to develop rules for a grant program to control invasive species that specifically includes education and inspection activities at boat landings.

Section NR 103.03, Wis. Adm. Code, connects the quality of waters of the state with wetlands. This rule outlines the set of water quality related functional values or uses of wetlands that shall be protected in the interest of protecting, preserving, restoring and enhancing water quality. Functional values include discharge of groundwater to a wetland, recharge of groundwater through a wetland, storm and flood water storage, hydrologic functions, filtration or storage of sediments, nutrients and toxic sediments, shoreline protection, habitat, and scientific and natural scenic beauty.

Section NR 1.95 (3) (b), Wis. Adm. Code, identifies wetland values as complex, and breaks them into several categories, including 'biological functions' related to habitat, biodiversity, breeding, and feeding, 'watershed functions' related to physio-chemical functions like maintenance of hydrologic patterns and physio-chemical processes necessary for ecosystem stability, and 'recreational, cultural and economic values' related directly to activities like hunting, canoeing, culture and directly and indirectly related to water quality, habitat provision, culture and economics.

Chapter NR 115, Wis. Adm. Code, outlines Wisconsin's shoreland protection program, where shoreland subdivision and zoning regulations are required to "further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses; and reserve shore cover and natural beauty." Chapter NR 115, Wis. Adm. Code, outlines Wisconsin's shoreland protection program, where shoreland subdivision and zoning regulations are required to "further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses; and reserve shore cover and natural beauty." Section 59.692, Stats., requires counties to effect the purposes of s. 281.31, Stats., and to promote the public health, safety and general welfare by adopting zoning regulations for the protection of all shorelands in unincorporated areas that meet shoreland zoning standards promulgated by the department.

Sections NR 1.91 (4) and 1.91 (6), Wis. Adm. Code, outline public boating access standards and alternative public boating access standards for resource enhancement services. Resource enhancement services require that the public be provided with reasonable public boating access, stipulating that the department may provide protection services for pollution abatement or prevention and natural resources protection even if public access is not available.

Section NR 50.05, Wis. Adm. Code, details the administration of outdoor recreation program grants and state aids, including s. NR 50.05(8), stating that the acquisition of real property shall be in accordance with state and federal guidelines for preparation of appraisals and relocation assistance.

Chapter NR 149, Wis. Adm. Code, outlines the requirements for the administration of the laboratory certification program by the department. The rule created by this order requires laboratory work be conducted by a state-certified laboratory.

Chapters NR 153 and 154, Wis. Adm. Code, identify grant programs, best management practices, eligibility and cost-share procedures for lake, river and watershed projects addressing non-point source pollution.

General provisions and administrative procedures are similar to the procedures specified in the rules repealed by this order, chs. NR 190, 191, 192, 195, and 198, Wis. Adm. Code. The creation of ch. NR 193, Wis. Adm. Code, will allow the department to streamline procedures and align policies to unite the existing subprograms and provide consistency in guidance and administration.

5. Plain Language Analysis:

The Bureaus of Water Quality and Community Financial Assistance propose to repeal five related administrative codes that govern the department's surface water grants program and recreate one consolidated rule. Surface water grants includes programs dedicated to Lake Protection, River Protection, and Aquatic Invasive Species (AIS), and provide over \$6 million a year to lake and river groups, other nonprofit organizations, and governments leading a wide range of surface water planning and management projects. The statutes and current administrative codes for these grant programs have evolved incrementally over 26 years but were never comprehensively consolidated into a single program. The proposed ch. NR 193 will unite the program under a consistent set of procedures and policies, improving customer service and satisfaction and administrative consistency and efficiency. The proposed rule will also update the program to employ modern management practices, enhance project performance and grantee accountability, and ultimately support better and more cost-effective environmental outcomes that serve local needs and advance department management objectives for state surface waters.

Grants and contracts under existing administrative codes provide state cost-sharing assistance to nonprofit organizations and governmental units for two primary activities: (1) Planning projects to help communities understand the condition of aquatic ecosystems and watersheds, conduct studies, and develop management plans, and (2) Management projects to protect and improve water quality and aquatic habitat and prevent and control aquatic invasive species (AIS).

Annually, around 40% of the available funding is allocated to planning activities on lakes, rivers and for aquatic invasive species, while around 60% is dedicated to management. Under the current planning program, awards for AIS range to \$150,000 per project, lake planning projects may be awarded up to \$25,000 per project (\$100,000 per lake), river planning projects are capped at \$10,000, and county lake classification projects are awarded up to \$50,000. Under the current program for management, AIS control projects and lake management plan implementation projects are eligible to compete for up to \$200,000. Shoreline and wetland restoration projects are eligible for up to \$100,000. River management projects may be awarded up to \$50,000. The Healthy Lakes program awards \$1,000 per best management practice installed, not to exceed \$25,000. Land acquisition grants may be requested for up to \$50,000 for rivers and \$200,000 for lakes. Appropriations for all three grant programs come from the Water Resources Account of the Conservation Fund (funded by motor boat gas tax revenues). The proposed consolidated rule will be the first fully comprehensive review and update of these rules.

The recreated rule also will update citations, references, and notes to appropriate statutes and

administrative codes and include other housekeeping changes. Some of the proposed changes will implement recommendations from three Lean Six Sigma projects the department completed to streamline the application process and create administrative efficiencies.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

There is no direct comparison with federal regulation. These are non-regulatory programs. Proposed changes are intended to assist the department in implementing the goals of the federal Clean Water Act and U.S. Fish and Wildlife Service (USFWS) aquatic invasive species regulations. Under plans filed with the U.S. Environmental Protection Agency and USFWS, federal funding received by the department may be awarded through these grants and state funds awarded through these programs may count as state match to federal funds the department receives.

This rule references best management practices outlined in the U.S.D.A. Natural Resources Conservation Service practice standards for Wisconsin.

7. Comparison with Similar Rules in Adjacent States:

Neighboring states provide cost-sharing grants using state and federal funds to support activities that are substantially like those eligible for financial assistance under this proposed rule. Like Wisconsin, each of the neighboring states administers a section 319 program funded by the Environmental Protection Service to address nonpoint source pollution.

Minnesota

The Minnesota Department of Natural Resources offers competitive grants to help qualified organizations carry out projects to solve issues that impact Lake Superior and its coast. Projects focus on protecting and restoring habitat and water quality, sustainable development, education and providing public access. Grants awarded in the annual category range from \$10,000 to \$100,000, and short-term grants range from \$2,500 to \$10,000. \$12.5 million has been awarded since 2001.

Minnesota supports work on invasive species through state-funded grant programs. They provide assistance for AIS education, planning and prevention, for AIS control, and for watercraft inspections. Due to funding limitations, Minnesota is not accepting applications in 2018.

Minnesota administers a grant program to assist county governments with stream bank maintenance. Activities include debris and vegetation removal, bank stabilization, and snagging and sedimentation reduction. This cost-sharing program usually awards between \$5,000 and \$15,000 per project. The program was created in 1973; it is not currently funded but remains in place in case funding is restored in the future.

Historically, Minnesota also ran a wild and scenic river land acquisition program to further the Wild and Scenic River statutes and rules. The program was last funded for payments in 1989.

Michigan

The Michigan Department of Environmental Quality (DEQ) manages a Coastal Management Grant program. Awards to eligible applications are intended to support coastal management planning, to protect and restore coastal and estuarine areas, to protect high quality areas, rare and threatened species and natural communities, to fulfill recreational needs, to carry out management plans, and to acquire and

manage land. Projects must be held in public ownership and provide conservation in perpetuity, provide public access, and be consistent with resource protection. The maximum for a single grant award is \$1.5 million. For planning and construction projects, awards range from \$10,000 to \$100,000.

Michigan also provides support for local governments and organizations to implement water quality monitoring projects throughout the state. These grants are currently unavailable due to lack of funding. Local governments, schools, municipalities, planning agencies and other eligible applicants also receive cost-shared state funding to support a volunteer cleanup program for rivers, streams, and creeks.

The Clean Michigan Initiative provides state funding to implement physical improvements in approved watershed management plans intended to restore and protect waters. Eligible activities include best management practices, project evaluation, and load reduction modelling. A DEQ-approved watershed plan is required to be eligible for the funds. Between \$1 and \$2 million in funding is typically available per year. There is no financial cap on proposals, but projects must cost at least \$25,000.

Michigan also supports a set of storm water and infrastructure grant programs. The Source Water Protection program provides matching funds to public water supply systems to develop and implement projects to prevent drinking water sources from contamination. \$500,000 is available annually. The State Revolving Fund provides low-interest loans for water pollution control projects, including wastewater treatment system improvements, storm water treatment projects, and nonpoint source pollution control projects. Funding levels per year depend on federal funding. The Strategic Water Quality Initiatives Fund provides low-interest loans for water pollution control, including upgrade and replacement of failing septic systems or for the removal of groundwater or storm water from sanitary or combined sewer leads. Between \$10 and \$20 million are available annually.

Michigan's Invasive species grant program addresses prevention, detection, eradication and control for terrestrial and aquatic invasive species. Minimum grant awards are \$25,000 with maximum amounts between \$60,000 and \$400,000 depending on the type of project. \$3.6 million was available for the 2017 grant cycle.

Iowa

The Iowa DNR provides cost-sharing grants to county conservation boards for land acquisition and fish habitat restoration. Land shall be controlled by the county applicant. Eligible activities include aeration, aquatic plant projects, construction of sediment retention basins, fish ladder construction, dam repair and removal, and land acquisition. In 2019, \$70,000 will be available.

Dam mitigation projects are also eligible for state financial assistance. A maximum of \$50,000 per project may be given to reduce the damage and impacts of low head dams in a way that demonstrates beneficial effects on stream health, fish or mussel migration and habitat, aesthetics, and recreational value. This year, the program will grant \$200,000.

Iowa's Land and Water Conservation Fund is a highly competitive program that awards federal funds to counties for cost-sharing grants that improve outdoor recreation area development and acquisition. Similarly, the city parks and open spaces grant program provides funding for open spaces. The Water Recreation Access cost-sharing program supports land acquisition and development of water access points and boat launches. The conservation education program provides around \$350,000 per year for conservation and stewardship education. Funding for these programs comes through the resource enhancement and protection (REAP) Act of 1989 and was over \$2 million in 2017.

Illinois

The Illinois Department of Natural Resources administers a federally-funded Land and Water Conservation Fund and a state-funded Open Space Lands Acquisition and Development program that provides cost-shared assistance to local units of government to carry out projects that conserve land and water. Eligible activities include the acquisition of land for public parks and conservation purposes, and development activities that are eligible for funding include construction of water quality basins, habitat restoration, wetland restoration and nature parks. Land acquisition for open space and recreation includes the ability to purchase land for conservation purposes, including the protection of floodplains, wetlands, natural areas, wildlife habitat and unique geologic or biologic features. Grant awards range up to \$750,000 for acquisition projects and \$400,000 for development projects. Illinois' Wildlife Fund Grant program provides support for non-profit organizations to preserve, protect and acquire or manage habitat, including flyways and other waterfowl areas.

Illinois also runs a coastal management program that awards local government units, educational institutions, and other non-profits funds for coastal education and outreach, land acquisition, resource protection, habitat restoration, invasive species management, access, and low-cost construction projects. Awards often total over \$1 million per year.

8. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:

None.

9. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:

None.

10. Effect on Small Business (initial regulatory flexibility analysis):

Small business is not directly affected by the rule because grants are issued only to governmental units, educational institutions, qualified non-profit organizations and FERC-licensed hydroelectric corporations. Therefore, under s. 227.114, Stats., an initial regulatory flexibility analysis is not required. Environmental consultants and companies involved in surface water planning, surface water management, and nuisance species control should benefit from a consolidated and streamlined program. Changes in the funding caps for grant programs and changes in the timing of the grant cycle may affect the timing and activity cycles of their work. However, the addition of quality assurance requirements in s. NR 193.05 will mean that, for some projects, a grantee must hire contractors with minimum training and qualifications. Consultants will incur costs for staff time to attend required trainings but registration costs will be minimal or free.

11. Agency Contact Person: Carroll Schaal. 101 S Webster St. Madison WI, 53703
Carroll.Schaal@wisconsin.gov. (608) 261-6423

12. Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by mail or email to:

Alison Mikulyuk

Department of Natural Resources

101 S Webster St. Madison WI, 53703

608-264-8947

Alison.Mikulyuk@Wisconsin.gov

Written comments may also be submitted to the Department at

DNRAAdministrativeRulesComments@wisconsin.gov.

Hearing dates and the comment submission deadline are to be determined.

SECTION 1. NR 190 is repealed.

SECTION 2. NR 191 is repealed.

SECTION 3. NR 192 is repealed.

SECTION 4. NR 193 is created to read:

**CHAPTER NR 193
SURFACE WATER GRANT PROGRAMS
SUBCHAPTER I – GENERAL PROVISIONS**

NR 193.01 Purpose. This chapter establishes procedures for awarding cost-sharing grants to public and private project grantees to improve and protect the waters of Wisconsin. Grants made under this chapter help an eligible grantee prevent and control the spread of aquatic invasive species as provided for in s. 23.22 (2) (c), Stats., develop and implement a lake management planning grant program as provided for in s. 281.68, Stats., implement a lake management and classification grant program as provided for in s. 281.69, Stats., implement a river protection grant program including planning and management activities as provided for in s. 281.70, Stats., and establish administrative procedures for a lake monitoring contracts program and to specify the eligible activities and qualifications for participation in the statewide lake monitoring network pursuant to s. 281.68 (3) (b), Stats.

NR 193.02 Applicability. (1) This chapter outlines a grant program to provide financial assistance for surface water planning and management projects occurring in the state of Wisconsin. Eligible grant recipients include counties, cities, towns, villages, and other local governmental units; tribal governing bodies; town sanitary districts; public inland lake protection and rehabilitation districts as described in s. 33.21, Stats.; qualified nonprofit conservation organizations as defined in s. 23.0955 (1), Stats.; qualified surface water management organizations; qualified non-resident entities; qualified school districts, colleges and universities;

qualified lake associations; qualified river management organizations; and state and federal resource agencies. Other organizations seeking eligibility may submit a request for a determination of eligibility on a form provided by the department.

(2) Funds awarded under this chapter may be used for education, planning and management projects conducted for the benefit of surface waters and aquatic ecosystems. Lake planning and protection funds are available for projects on lakes. Lake Management grants that include resource enhancement activities are available for projects being conducted on public inland lakes. River planning and protection grants are available for rivers and riverine ecosystems. Aquatic invasive species, or AIS, grants are available for projects being conducted on surface waters of the state including lakes, rivers, streams, wetlands and the Great Lakes.

NR 193.03 Definitions. In this subchapter:

(1) “Acquisition costs” means the fair market value of the property as determined by department appraisal guidelines and reasonable costs related to the purchase of the property but limited to the costs of appraisals, legal fees associated with closing up to a maximum DNR cost share of \$1,000, land surveys, title and gap insurance costs, title company closing costs, recording fees, historical and cultural assessments required by the department, the cost of environmental inspections, audits, and baseline documentation costs required for conservation easements. It does not include environmental clean-up costs, brokerage fees paid by the buyer, real estate transfer taxes or any other cost not identified in this subsection.

(2) “Agent of the department” means a person authorized to act on behalf of the department.

(3) “Aquatic ecosystem” means a lake ecosystem or riverine ecosystem.

(4) “Aquatic invasive species” means non-indigenous water or wetland-dwelling organisms or their hybrids, cultivars, subspecific taxa, and genetically modified variants whose introduction into aquatic ecosystems causes or is likely to cause adverse economic, recreational or environmental impacts or harm to human health, and includes individual specimens, eggs, larvae, seeds, propagules, and any other viable life-stages of such species. Aquatic invasive species are legally classified under ch. NR 40 and s. NR 109.07.

(5) “Aquatic life” means one or more of the following: aquatic plants, aquatic algae, aquatic invasive species, aquatic invertebrates, aquatic or semi-aquatic vertebrates, and other aquatic organisms and their habitats.

(6) “Baseline document” means an inventory of the features of a property including reports, maps, photographs, and other documentation that provides an accurate representation of the property at the time an easement funded with a grant under this chapter is executed. The baseline document shall serve as an objective information baseline for monitoring compliance with the terms of the conservation easement funded with a grant under this chapter.

(7) “Capital assets” means equipment costing \$5,000 or greater, and includes customized equipment where the sum of the components is equal to or exceeds \$5,000.

(8) “Comprehensive land use plan” has the meaning given in s. 66.1001(2) (e), Stats.

(9) “Conservation easement” has the meaning given in s. 700.40 (1) (a), Stats.

(10) “Control” means to cut and remove, otherwise remove, destroy, suppress, or prevent the introduction or spread of aquatic invasive species.

(11) “Cost containment” mean the process of controlling the expenses required to complete a project within pre-planned budgetary constraints.

(12) “Department” means the Wisconsin department of natural resources.

(13) “DNR cost share” means the percent of a project or program cost covered by a grant from the department

(14) “Enhancement” means activities conducted to increase one or more beneficial functional values or services of an aquatic ecosystem.

(15) “Equipment” means long-term assets having a useful life of more than one year and an acquisition cost of less than \$5,000.

(16) “Final payment” means the last payment issued by the department to the grantee for a grant awarded under this chapter after the project has been completed to the satisfaction of the grant agreement or contract.

(17) “Final report” means a written account of project activities, accomplishments and any obstacles encountered, along with all data collected, which shall be submitted in a form specified by the department.

(18) “Force account” means the use of the grantee’s own employees, supplies, or equipment for a project funded under this chapter.

(19) “Grant advance” means the portion of the grant award paid to the grantee after returning a signed grant agreement and prior to project implementation.

(20) “Grant agreement” means a contract between the grantee and the department detailing project scope, grant award, grant period, DNR cost share, project products, reimbursement process, and conditions that restrict actions of the grantee during the life of the project and during the operation and maintenance phase once the final payment has been issued by the department. The department may require the grant agreement be recorded at the county register of deeds.

(21) “Grant award” means the dollar amount awarded to the grantee by the department and available to the grantee for reimbursement of eligible project costs.

(22) “Grant period” means the time period stated in the grant agreement during which the grantee may expend grant program funds for the project.

(23) “Grantee” means an eligible organization that receives a grant from the department under this chapter

(24) “Grantee match” means the dollar amount of the eligible project costs paid for by the grantee.

Note: Eligible sources of grantee match may include cash from the grantee; funds generated by local, non-department state or federal governments; grants or contributions from

foundations, businesses, private individuals, or nonprofit organizations; and donated and force account labor, professional services, supplies, and equipment usage.

(25) “Indirect costs” means costs not directly assignable to a grant, program, or project

(26) “Lake” means all or a portion of a lentic body of water, including lakes, ponds, millponds, pools, impoundments, reservoirs and flowages, that are within the boundaries of the state.

(27) “Lake ecosystem” means the lake and all streams, channels, wetlands, groundwater, and lands in the watershed and the terrestrial and aquatic life therein.

(28) “Land management plan” means a plan approved in writing by the department detailing how a property acquired with funds under this chapter shall be managed and maintained and made available to the public.

(29) “Littoral area” means the light-rich shallow-water zone of a lake extending from the ordinary high-water mark to the greatest lake depth capable of being occupied by aquatic plants.

(30) “Local governmental unit” has the meaning given in s. 66.0131 (1) (a), Stats.

(31) “Management plan” means a written document that defines management goals and provides strategic direction for selecting project activities to accomplish them. Examples of management goals include preventing pollution, protecting surface water quality, protecting the quality of aquatic ecosystems, improving surface water quality, or improving the quality of aquatic ecosystems.

(32) “Mitigation project” means the restoration, enhancement, or creation of wetlands or shoreline habitat to compensate for permitted adverse impacts to other wetlands or shoreline habitats. “Mitigation project” includes using credits from a wetland mitigation bank.

(33) “Natural resource agency” means a state or federal government agency that manages lakes, rivers, streams, wetlands, fish, wildlife, forests, parks, plants, soils, or agricultural lands.

(34) “Natural resource enhancement services” has the meaning given in s. NR 1.91 (2) (d).

(35) “Nonpoint source water pollution” has the meaning given in s. 281.16 (1) (e), Stats.

(36) “Nonprofit conservation organization” means, for the purposes of this chapter, a nonprofit corporation, a charitable trust, or other nonprofit association, who is registered in the state of Wisconsin, and whose purposes include the acquisition of property for conservation purposes and whose bylaws, charter, or articles of incorporation reflect as a purpose of the organization the acquisition of property for conservation purposes, and that is described in section 501 (C)(3) of the internal revenue code and is exempt from federal income tax under section 501 (a) of the internal revenue code.

(37) “Ordinary high water mark” means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristics. Where the bank or shore at any particular place is of such character that it is difficult or impossible to ascertain where the point of ordinary high water mark is, recourse may be had to the opposite bank of a stream or to other places on the shore of a lake or flowage to determine whether a given stage of water is above or below the ordinary high water mark.

(38) “Parcel” means a tract of land.

(39) “Partial payment” means request for reimbursement of eligible project expenses by the grantee after any grant advance has been expended on eligible projects costs, including grantee match for the grant advance, and prior to completion of the project.

(40) “Point source” has the meaning given in s. 281.01 (12), Stats.

(41) “Program-approved protocol” means a method or protocol designed to accomplish activities in a surface water grant, including monitoring, modelling, assessment, protection, or restoration activities that is approved for use by the department.

(42) “Project” means the practices or activities for which funds are applied under this chapter.

(43) “Project priority list” means a ranking by the department of eligible projects described in grant applications submitted to the department.

(44) “Project scope” means the part of the grant agreement that succinctly describes the extent or range of what the projects will accomplish. Project scopes may include a summary of the specific goals and objectives, deliverables, products, tasks and timeline for a project that is funded under this chapter. Project scope incorporates information submitted by the applicant in the grant application.

(45) “Public inland lake” means a lake, reservoir, flowage, or millpond, or portion thereof, within the boundaries of the state that is presently accessible to the public by contiguous public lands or easements giving public access.

(46) “Public inland lake protection and rehabilitation district” has the meaning given in s. 33.21, Stats.

(47) “Public waterbody” means any lake, pond, stream, creek, drainage way, waterway, wetland, or other area where water naturally flows or drains and that is open to the public for swimming, paddling, canoeing, kayaking, motorized boating, windsailing, fishing, ice fishing, and esthetic enjoyment.

(48) “Qualified lake association” means a lake association that meets the definition in s. 281.68 (3m), Stats., and that charges an annual membership fee of not less than \$5 and not more than \$50.

(49) “Qualified non-resident entity” means a qualified non-profit organization or qualified river management organization that meets all of the following criteria:

(a) The entity is not registered with the Wisconsin department of financial institutions.

(b) The entity has an established presence in the state of Wisconsin as determined by the department.

(c) The entity is seeking a grant award for projects exclusively benefiting the waters of the state of Wisconsin.

(50) “Qualified river management organization” means a nonprofit corporation as defined in s. 181.0103 (17), Stats., or a chapter or legal affiliate of a nationally recognized nonprofit organization registered in another state, that meets all of the following conditions:

(a) The organization specifies in its articles of incorporation or bylaws that a substantial purpose of its being incorporated is to support the protection or improvement of one or more rivers or riverine ecosystems for the benefit of the general public or demonstrates that the substantial purpose of its recent past actions was to support the protection or improvement of one or more rivers for the benefit of the general public.

(b) The organization does not limit membership or deny the right of any member or any class of members to vote.

(c) The organization requires payment of an annual membership fee of not less than \$5 and not more than \$50.

(51) “Qualified school district” has the meaning given in s. 281.68 (3m) (c), Stats.

(52) “Resource protection services” means activities pursuant to ss. 281.55, 281.57, 281.65, and 281.695 (5), Stats., and s. NR 1.91 (2) (L) that protect surface waters and aquatic ecosystems, including nonpoint source water pollution control, lake planning grants, and certain lake protection grants.

(53) “Restoration” means to enhance or reestablish historic surface water or shoreline habitat conditions and functions, to the maximum extent practicable, at a site where they have been diminished, including reestablishing natural hydrology, natural land contours, native vegetation, controlling invasive species, or the replacement of rock or woody cover.

(54) “River” means a lotic waterbody located in or bordering the state and includes rivers, streams, creeks, channels, flowages and impoundments.

(55) “Riverine ecosystem” means the river and all wetlands, groundwater, and lands in the watershed of the river and the terrestrial and aquatic life therein.

(56) “Shoreline habitat” means the area adjacent to both sides of the ordinary high-water mark including the littoral and adjacent upland habitat areas that can provide both water quality and ecosystem benefits to a waterbody.

(57) “Supplies” means short-term assets that are consumed during the project, typically within the course of one year.

(58) “Surface water” lies within or bordering the boundaries of the state and has the meaning given in s. NR 811.02 (66).

Note: Surface waters include lakes, rivers, and wetlands.

(59) “Surface water management organizations” means a nonprofit corporation, a charitable trust, or other nonprofit association and that is described in IRC s. 501(c)(3) and is exempt from federal income tax under IRC s. 501(a) of the internal revenue code. The stated purpose or past actions of a surface water management organization shall be aligned with the purposes of this chapter.

(60) “Town sanitary district” has the meaning given in s. 60.70 (9), Stats.

(61) “Tribal governing body” means an elected tribal governing body of a federally recognized American Indian tribe or band.

(62) “Waterbody” means a lake, river, wetland, or portion thereof.

(63) “Watercraft” has the meaning given in s. 30.01 (7), Stats.

(64) “Waters of the state” has the meaning given in s. 281.01 (18), Stats.

(65) “Watershed” is an area of land over which surface water flows and drains to common outlet. A watershed is defined relative to a specific point in the surface water drainage system and includes all land upstream that drains to that point.

(66) “Wetland” has the meaning given in s. 23.32 (1), Stats.

(67) “WisDOT” means the Wisconsin department of transportation.

Note: Applicants may wish to review “Procurement Guide for Local Governments Receiving DNR Grants” found on the department website.

NR 193.04 Accountability. (1) A grantee shall follow generally accepted accounting principles and practices during the implementation of a project funded under this chapter. If a grantee receives a grant advance from the department, the grantee shall maintain the grant advance in a separate account. If interest is earned on the account, the grantee shall use that interest for the same purposes for which the department originally awarded the grant. A grantee shall document all project costs and maintain documents to support grant expenditures in sufficient detail to show that project costs are consistent with the grant agreement awarded by the department. A grantee shall maintain all financial records for the number of years specified in the grant agreement after the date on which the department issues final payment and make these financial records available to the department staff upon request. Financial records may include published public notice and bid summaries; records showing volunteer time, donated professional services, supplies and equipment; invoices; canceled checks, bank or credit card statements; documentation regarding the life and depreciation of equipment purchased with a grant under this chapter; and any other documents that support all project costs claimed by the grantee. A grantee shall comply with all applicable state and federal laws and regulations regarding cost-containment, bidding, contract awards, wage, and labor rates.

(2) A grantee shall submit to the department a request for reimbursement on forms provided by the department at a frequency determined by the department and specified in the grant agreement. A grantee shall submit a request for final payment no later than 6 months after the end of the grant period specified in the grant agreement. The grantee is eligible for reimbursement only for eligible project costs incurred during the grant period, unless approved by the department. The grantee shall submit to the department progress reports with each reimbursement request. The total of all partial reimbursement payments issued by the department may not exceed 90% of the total grant award amount. The department shall retain a minimum of

10% of the grant award amount for the final payment. The department may not issue final payment until a final report is received and approved by the department.

(3) The grantee of a planning project is eligible to receive a grant advance upon request. Thereafter, the department shall only process one reimbursement request for a planning project at the conclusion of the project after review of final reports and supporting documentation.

(4) The grant application, as modified during application review, is incorporated into the grant agreement by reference. A grantee may request, in writing and during the life of the grant agreement, a grant agreement amendment for expenditures that deviate from that which appears in the original grant agreement, for changes to project scope, or for an extension of the grant period. In evaluating a grantee's request, the department shall consider justification provided by the grantee and availability of funds. The department may require requests for cost amendment to be submitted during a subsequent application process to be ranked with new applications. The department shall provide amendment approvals to the grantee in writing.

(5) The department may conduct an audit of grantee's records for a grant award during the project period and for up to 6 years after the department has issued final payment. The department may require that the grantee repay any prior payment issued by the department if an audit reveals that costs cannot be substantiated.

(6) The department may terminate a grant agreement issued under this chapter for nonperformance of any term or condition of the grant agreement. Nonperformance may include failure by the grantee to provide progress reports, make progress on activities approved for funding, complete the project by the end of the grant period, or obtain prior approval for scope or budget amendments before making project changes. The department may seek reimbursement of any grant award previously distributed to the grantee. The department shall notify a grantee about its intent to terminate a grant agreement, in writing, and include the reasons for termination.

NR 193.05 DNR cost-share percentages and maximum grant award amounts. Grants awarded under this chapter cover a percentage of total eligible project costs up to the maximum grant award amount. The department shall identify the DNR cost-share percentage in the grant

agreement. The grantee shall be responsible for its portion of the cost share and for the amount of project costs exceeding the grant award amount. The grantee shall pay the match from other sources not provided by the department. The grantee shall confer with the department if grantee match includes federal funds or other state funds to determine applicability as grantee match.

TABLE 1
Surface Water Grant Subprogram Cost Share Table

This table lists the DNR cost-share percentage, maximum grant award, grantee match, maximum grant advance possible as a percentage of the grant award amount, and lake public access requirements of each subprogram under this chapter.						
Grant Category	Grant Subprogram	DNR Cost Share	Maximum Grant Award	Grantee Match	Maximum Grant Advance	Public Lake Access Required
Education and Planning Projects ^a	Education	67%	\$5,000	33%	75%	No
	Lake Planning		\$25,000			
	River Planning		\$10,000			
	County Lake Grants		\$50,000			
	Clean Boats Clean Waters (watercraft inspection)		\$24,000 ^b			Yes
Surface Water Management Projects	Healthy Lakes & Rivers	75%	\$25,000	25%	25%	Project-specific
	Shoreland Restoration Projects		\$100,000			
	Littoral & In-stream Projects		\$100,000			
	Wetland Restoration Projects		\$100,000			
	Lake Management Plan Implementation		\$200,000		25% not to exceed \$25,000	
	River Management Plan Implementation		\$50,000		25%	No
	Ordinance Development		\$50,000			
	AIS Early Detection and Response		\$25,000			
	AIS Large-scale Population Management		\$150,000			
	AIS Small-scale Population Management		\$50,000			
	AIS Research and Demonstration		\$500,000 ^c			
	Lake Fee Simple Land and Easement Acquisition		\$200,000			

	River Fee Simple Land and Easement Acquisition		\$50,000			
	Wetland Restoration Incentive	100%	\$10,000	0%	0	No

^a The maximum amount of combined education and planning grant awards to a lake, river, or sponsor may not exceed \$50,000 in one state fiscal year as specified in s.281.68 (2) (a), Stats.

^bThe watercraft inspection program provides \$4,000 for inspection activities carried out on each landing or pair of landings.

^cA maximum of \$500,000 shall be awarded annually for projects under this subprogram

^dA grantee acquiring property through title in fee simple or rights to a property via a conservation easement shall ensure that the property provides for public access as provided in s. 281.71, Stats., unless the department determines, and documents in writing, that the property may be closed to public access to protect wild animals, plants or other natural features in accordance with s. 281.71 (1) (c), Stats.

NR 193.06 Eligible and ineligible costs. (1) **ELIGIBLE COSTS.** The department shall reimburse eligible project costs at the department cost-share percentage up to the maximum allowable grant award amount. Those costs shall be reasonable and necessary for the project, documented, consistent with the approved application that is part of the grant agreement, directly related to the project, and incurred during the grant period. Eligible costs include any of the following:

(a) *Labor and fringe benefits.* 1. ‘Grantee staff time.’ Costs incurred by grantee staff, whether existing or new, to carry out project activities identified in the grant agreement. Labor costs shall be based on the grantee’s established labor rates identified in the approved grant application budget for staff time in the form of salary, hourly wages, fringe benefits and other items determined to be appropriate by the department.

2. ‘Administrative costs.’ Actual salary or hourly wages and fringe benefits incurred by immediate supervisors of grantee staff implementing the project; by grantee accountant, payroll, purchasing agent; or by legal counsel related to the implementation of the project. This category of expenses is often called administrative costs. Administrative costs may not exceed 10% of the project grant award amount.

(b) *Supply and services costs.* Costs for items directly related to the implementation of the project and proportional share of costs for items only partially used for implementation of a project under this chapter. Supplies and services include:

1. Office supplies, printing, photocopying, and postage.
2. Mileage costs incurred. Mileage costs shall not exceed the federal per mile business rate.
3. Reasonable planning, engineering, and design costs necessary to complete a regulatory permit application required to implement a project if the costs are incurred within 12 months prior to the grant application submittal deadline.
4. Fees necessary for federal, state, or local permits required for implementation of the project.
5. A proportional share of costs associated with telephones, personal computers, software, printers, and related devices associated with implementation of the project.

Note: Suppose that an approved grant application included costs for annual rental of a multi-function machine for the office. Suppose further than there are 6 staff in that office, each working on different projects. The proportional share of the annual rental of the multi-function machine that can be assigned to a grant under this chapter would be no more than 1/6 of the annual cost.

6. Engineering, landscape architecture design, construction, consulting or other professional services.
7. Sampling, monitoring, resource assessments and other field work and data collection costs.
8. Analyses performed by the Wisconsin state laboratory of hygiene or a facility certified by the department under ch. NR 149.
9. Rental or lease of equipment and facilities.
10. Website design and maintenance.
11. Advertising media costs, such as magazines, newspapers, radio, television, direct mail, exhibits, electronic or computer transmittals.

12. A proportional share of the costs of required financial and compliance audits for the project.

13. Training for grantee staff or volunteers that execute project activities.

14. Development, editing and distribution of informational or educational programs and materials, reports, management plans and other project documents and deliverables.

15. Installation of equipment and supplies limited to initial cost of installation.

16. Legal costs, including costs associated with preparation and filing of deed restrictions and other contracts and review of ordinance language.

17. Eligible costs for the department's watercraft inspection program are limited to:

a. Time spent by inspectors monitoring landings.

b. Time spent at trainings for Clean Boats, Clean Waters.

c. Purchase of Clean Boats, Clean Waters materials from UW-Extension.

d. Labor costs for the coordination and administration of a Clean Boats, Clean Waters program.

18. Other costs approved in writing by the department.

(c) *Equipment and capital asset costs.* Equipment and capital assets purchased with funds awarded under this chapter shall first be approved by the department. Inclusion of the equipment or capital asset in a grant agreement constitutes the department's approval. Equipment and capital assets shall conform to the maintenance and disposition of assets detailed in s. NR 193.14. If several component parts are purchased separately, and assembled into a single piece of equipment, the department shall consider the total cost of all components for reimbursement considering the appropriate cost-share percentage.

(d) *Acquisition costs.* Costs associated with the purchase of fee simple or a conservation easement land acquisition as defined in s. NR 193.03 (1).

(2) INELIGIBLE COSTS. Costs not directly associated with or necessary for the implementation of the project, as determined by the department, are ineligible for reimbursement. Ineligible costs include those specified in s. NR 193.55 and all of the following:

(a) Fines and penalties due to violation of, or failure to comply with, federal, state, or local laws and regulations.

(b) Ordinary operation expenses of a grantee, such as salaries and expenses of public officials that are not directly related to the project.

(c) Purchase of aquatic plant harvesters, boats, motor vehicles, or office furniture.

Note: Financial support for the purchase of aquatic plant harvesters is available as specified in s. 30.92 (4) (b) 8., Stats.

(d) Dredging for enhancing navigation or recreation.

(e) Dam maintenance, repair and operation.

(f) Liability insurance.

(h) Water safety patrols.

(i) Routine maintenance and operating costs of equipment or facilities, including pumps, aerators, plant harvesters, or sedimentation basins.

(j) Indirect Costs.

(k) Food or beverages at grantee events.

(L) Clothing, except for Clean Boats Clean Waters and other authorized department activities.

(m) Consulting costs for preparing an application for a grant under this chapter.

(n) Costs associated with fundraising.

(o) Purchase and installation of remote surveillance devices designed for automated watercraft inspection.

NR 193.07 Grantee match. (1) See Table 1 in s. NR 193.05 for the DNR cost-share percentage and requirements for grantee match.

(2) Eligible sources of grantee match may be cash or in-kind contributions.

(a) To be acceptable, in-kind contributions shall otherwise be eligible expenses under the awarded grant subprogram and shall conform to the requirements of expense eligibility for that particular subprogram. In-kind contributions include all of the following:

1. Donated labor from grantee staff established by grantee time sheets including salary, hourly wages, fringe benefits, and other costs determined by the department to be appropriate for the direct implementation and administration of the project.

2. Donated labor from volunteers, the maximum value of which is established by the department and included in the Surface Water Grant Program Guidance available on the Surface Water Grant Program webpage. Volunteers shall be at least 14 years of age in order for their time to be eligible as match.

Note: For a county conducting a project requiring compliance with U.S. department of agriculture natural resources conservation service standards, the value of donated labor rate in that county may be established by the U.S. department of agriculture farm service agency.

3. Donated professional services with the value determined in writing by the donor on donor letterhead.

4. Donated supplies or construction materials with the value determined in writing by the donor.

5. Donated equipment with equipment purchase and rental value determined by the WisDOT's Classified Equipment Rates Standard and Special Rated Units for highway equipment. If the item donated does not appear on the WisDOT's Classified Equipment Rates

Standard and Special Rated Units document, the applicant shall determine the value of donations using one of the following methods:

a. Choose the closest equipment equivalent from WisDOT's Classified Equipment Rates Standard and Special Rated Units for highway equipment. Where the WisDOT's Classified Equipment Rates Standard and Special Rated Units for highway equipment lists "rate set locally," the department may determine a rate as published in the Surface Water Grant Program Guidance.

b. Determine the current market value using at least 3 estimates for purchase of equipment from vendors within the vicinity of the project. The lowest estimate will be used to establish the value of donated equipment. The applicant shall submit copies of all estimates with the grant application and the grantee shall maintain copies of estimates in the grantee's project file.

c. Determine the daily market rental rate at the time of application. The applicant shall establish the daily market rental rate using at least 3 estimates for the daily rental rate of equipment from vendors within the vicinity of the project. The lowest estimate will be used to establish the value of donated equipment use, prorated to reflect the number of hours of actual use.

Note: Example: Daily market rate of \$60, divided by 8 hours = \$7.50 hourly rate x 2 hours use = \$15 donated value listed in grant application.

Note: An applicant shall use the version of the WisDOT's Classified Equipment Rates Standard and Special Rated Units for highway equipment in effect in the year in which the equipment usage occurred. The rates for equipment may be obtained from the Wisconsin department of transportation, 4802 Sheboygan Avenue, Madison, WI 53705. See the department's Surface Water Grant Program webpage for the current Wisconsin department of transportation's Classified Equipment Rates published in the State Highway Maintenance Manual.

Note: In-kind contributions may come from applicant members or from third parties. For grant purposes, "third parties" are neither the department of natural resources nor the grantee.

6. Other costs determined by the department to be necessary to carry out a successful project.

(b) The grantee shall track match expenditures by subcategory shown in the approved project budget, maintain proofs of purchase and proofs of payment for both cash expenditures, and maintain all documentation that established value for all donated, in-kind contributions.

(c) The grantee shall track the substantiated value of donated materials, equipment, services, and labor as all or part of the local share of the project costs.

NR 193.08 Cost containment. (1) PROCEDURES. A grantee shall implement cost containment measures for all capital assets and any supply, service, or equipment item purchased by the grantee for projects funded under this chapter and where the total cost of each supply, service or equipment item exceeds \$1,000. The grantee shall identify the cost containment procedure used when requesting reimbursement. The grantee shall use one or more of the following cost containment procedures for each practice identified in the grant agreement:

(a) *Average cost.* Using cost information obtained during the 12 months prior to the start date of the grant agreement, determine an average cost per unit of material or labor for the implementation of activities. The grantee may use information obtained from the department, other departments, or other sources to determine average costs. Under this option, eligible project costs may not exceed the average cost.

(b) *Competitive bidding.* Following the requirements under ch. 16, Stats., a grantee may request bids from contractors for the implementation of practices listed in a grant agreement. The grantee shall identify criteria for determining acceptable qualifications and publish these with the bid notice. Under this option, a grantee may select a qualified contractor other than the lowest qualified bidder but shall contribute 100% of the difference between the lowest qualified bid amount and the selected bid amount.

(c) *Flat rate.* The department may establish flat rates for eligible costs funded under this chapter. An applicant may choose to use the department flat rate as one means of cost containment. A grantee that is a governmental unit may establish a maximum cost limit per practice, also known as a flat rate, for the implementation of practices identified in a grant

agreement. The grantee may use information obtained from the department, other departments, or from other sources to determine a flat rate.

Note: Flat rates will be published by the department on the Surface Water Grant Program webpage.

(d) *Force account*. If grantee employees are able to perform the work at a cost lower than the private sector, a grantee may assign its employees to implement a practice.

(e) *Alternative cost containment measures*. If a grantee determines that another cost containment procedure would be more effective than the cost containment procedures described in this subsection, the grantee shall identify the alternative in the grant application it submits for review and approval by the department.

(2) DONATIONS. The cost-containment procedures in this section shall be used to control the cost of in-kind contributions, including the substantiated value of donated materials and supplies, equipment, services, and labor necessary to implement practices. All sources of grantee match shall be indicated in the grant application submitted under this chapter. In-kind contributions shall abide by the all of following cost containment measures:

(a) The maximum value of donated professional labor may not exceed the prevailing local market wage for equivalent work.

(b) The maximum value of donated non-professional labor may not exceed the rate established by the department.

Note: The rate established by the department will be published on the Surface Water Grant Program webpage.

(c) The value of donated equipment as determined under s. NR 193.07 (2) (a) 5.

(d) The value of donated materials and services may not exceed market rates and shall be established by invoice.

(3) EXCEPTIONS. Cost-containment procedures established in this section do not apply to fee simple or easement land acquisition. Cost of land acquisition is always determined by appraisal approved by the department.

NR 193.09Applications. (1) APPLICATION SUBMISSION. (a) The department shall establish application deadlines for each subprogram under this chapter and publish those deadlines in guidance posted on the Surface Water Grant Program webpage. To be considered for funding, complete applications shall be post-marked no later than the application deadline for applications that are mailed, or shall be received by the department no later than 11:59 p.m. on the application deadline for applications submitted electronically. Complete applications are those that adhere to application instructions, provide all requested information, include complete project budgets and other required supporting documentation.

Note: The department's guidance on application deadlines is posted on the Surface Water Grant Program webpage.

Note: An application may be obtained from the Surface Water Grant Program's webpage.

(b) The department may accept AIS Early Detection grant applications year-round.

(2) APPLICATION ELIGIBILITY. The department will review applications for eligibility within 30 days of receipt. If the department determines an application is ineligible, it will be returned along with a written basis for the determination. Prior to the application deadline, a grantee may address the eligibility concerns and submit a revised application for reconsideration. If the application deadline has passed, a revised application will only be considered during the next annual grant cycle. An application may be considered ineligible for the following reasons:

(a) The application lacks information needed to evaluate and score.

(b) The application lacks the clarity needed to determine results or outcomes.

(c) The application proposes activities, outcomes or both that are inconsistent with state goals and objectives for surface water planning and management as determined by laws, codes and publicly vetted procedures and guidance.

(3) FUNDING FLEXIBILITY. The department shall determine if an application fits into more than one subprogram under this chapter. Each application may be scored against criteria for all applicable subprograms for which it qualifies.

(4) SCORING AND RANKING. (a) Following review for completeness and eligibility, department staff shall evaluate each application for adherence to subprogram priorities. Applications will be scored according to criteria published by the department. Applications will be ranked by subprogram, from highest to lowest project score.

(b) The department may establish a minimally acceptable score for each subprogram. Depending on the source of funds available, there may be years when the department does not award all funds and available funding is carried forward to the subsequent grant cycle.

(c) The department may offer financial assistance to an applicant in an amount less than requested if available funding is insufficient to fully fund a project in that subprogram. In the event 2 or more applications have an identical score and there are insufficient monies to fund both, the department shall split available funding evenly among all similarly scored projects.

Note: The department's scoring criteria and minimally acceptable score are available on the Surface Water Grant program webpage.

(5) APPLICANT NOTICE. The department shall notify applicants of the status of their grant application and likely amount of their grant award. If a project as described in the grant application is found to be ineligible, the department shall notify the applicant, in writing, of the basis for its non-eligibility determination. If the department is unable to provide the amount of grant funding requested by the applicant, the department shall notify the applicant, in writing, of the basis for funding denial. The department shall prepare a new or update an existing project priority list following review of applications submitted for the application cycle. The project priority list shall include all eligible applications, ranked by project score, that will receive grant funding. The department shall publish the priority list on the Surface Water Grant Program web page.

NR 193.10 Public access. (1) Each grant application for a project on a public waterbody shall include a description of the existing and proposed public access. The description shall

include current and future public use at the access sites, maps of the waterbody, location and numbers of carry-in sites and boat landings, numbers of car and trailer parking spaces or street parking options, and proximity to public parks.

(2) The department may not provide grant awards for natural resource enhancement services on waterbodies that do not meet the minimum public boating access standards provided in s. NR 1.91 (4) or the alternative public boating access standards provided in s. NR 1.91 (6).

(3) The department may provide grant awards for resource protection services under s. NR 1.91 (4) (c) if public boating access is not available on a waterbody.

Note: Early Detection and Response Grants awarded under subchapter 6 prohibited species identified in ch. NR 40 are considered resource protection services.

NR 193.11 Priorities. (1) The department shall establish statewide priorities for each subprogram under this chapter and publish those priorities in guidance.

Note: The department's published priorities list is posted on the department's Surface Water Grant Program webpage.

Note: The department shall use a variety of platforms to conduct outreach and notify potential applicants of funding priorities. Outreach efforts may include publication on the department's website, email notification, social media announcements, and other platforms of communication.

(2) The department shall give priority to applications on waterbodies that meet the minimum public boating access standards under s. NR 1.91 (4) (d) or where the department determines that existing facilities are sufficient to meet existing demand for public access. If public boating access does not exist on a waterbody and a grant application will increase public boating access, then the department shall include the application in the project priority list and rank it as if the project had public boating access. Project eligibility is subject to public access requirements under s. NR 193.10.

NR 193.12 Grant awards and grant agreements. (1) GENERAL PROCEDURES. A grant award may not exceed the state share considering the DNR cost-share percentage identified

under s. NR 193.05 for estimated costs of the project as requested in the grant application and approved by the department. Applicants may include in-kind contributions in their grant application budget. The department may use that budget to calculate the grant award. The department may not issue a grant award that exceeds a grantee's cash costs necessary to complete the project. The department may award a grant under this chapter while the grantee is in the process of acquiring the required permits for the project.

Note: The following method may be used to determine a grant award: An applicant submits a planning grant application, selecting the standard cost-share percentage of 67%. The application budget indicates cash costs of \$20,000 and in-kind contributions of \$20,000 for a total project cost of \$40,000. The DNR cost-share rate of 67% would yield a potential grant award of \$26,800 based on the cash costs and in-kind contributions. However, \$26,800 is higher than actual cash costs identified in the budget of \$20,000. As a result, the maximum grant award the department may provide in this case is \$20,000.

(2) AWARDS AND AGREEMENTS. All grant awards will result in the issuance of a grant agreement. The Grant Agreement is a contract between the department and the grantee, and the grantee's receipt of the grant award is conditional upon its execution of the Grant Agreement. The Grant Agreement will contain the terms and conditions of the grant award.

NR 193.13 Conditions for grant agreements. (1) GENERAL. A grant agreement may include any of the following conditions:

(a) The department and the grantee mutually agree to implement the grant agreement in accordance with the project proposal, application, terms, promises, conditions, plans, specifications, estimates, procedures, maps, and any assurances attached and made a part of the agreement.

(b) Any revisions to the original grant agreement approved by the department, including cost adjustments, time extensions, and scope changes, shall be made by an amendment to the original agreement. The grantee shall submit a written amendment request to the department. Amendments to cost or scope to the original agreement must be signed by the department and the grantee prior to the end date of the agreement. With the exception of Clean Boats Clean

Waters projects, time extensions to the original agreement may be granted by the department in writing without the requirement of the grantee's signature.

Note: To increase the likelihood of a successful amendment request, it is recommended that the grantee submit the request at least 2 weeks prior to the end date of the grant agreement.

(c) Failure by the grantee to comply with the terms of the grant agreement shall result in the suspension of all obligations of the department, unless the secretary of the department determines that such failure was due to no fault of the grantee. In such case, the amount required to settle at minimum costs any irrevocable obligations properly incurred shall be eligible for assistance under this chapter, at the department's discretion.

(d) The grantee may terminate the grant agreement, in writing, at any time prior to the start of the project and before expending any funds awarded under this chapter. After the project has been started or funds expended, a grantee may choose to terminate the agreement only in writing and by mutual written agreement.

(e) The department may require the grantee to reimburse the department for any funds the department deems appropriate in the event the grantee fails to comply with the conditions of the grant agreement. In addition, should the grantee fail to comply with the conditions of the grant agreement, fail to progress due to non-appropriation of funds, or fail to progress with or complete the project to the satisfaction of the department, all obligations of the department under an agreement may be terminated, including further project cost payment, at the discretion of the department.

(f) The grantee shall comply with all applicable Wisconsin statutes and Wisconsin administrative codes in fulfilling terms of the grant agreement. The grantee shall comply with all applicable federal, state, and local contract and bidding requirements.

Note: The grantee should consult its legal counsel with questions concerning contracts and bidding.

Note: The department has developed the Procurement Guide for Local Governments Receiving DNR Grants, available on the department website.

(g) The grantee shall obtain all regulatory permits and approvals required by federal, state, or local agencies, including water and wetland regulatory permits from the department, prior to implementation of permitted activity, and shall fully comply with the permits and approvals during implementation of permitted activity. The grantee shall submit a copy of the approved permit to the department along with the reimbursement request. The department may not issue reimbursement if the approved permit is not submitted by the grantee.

(h) Department funds may not be considered part of the grantee match. Interest earned on a grant advance shall not be considered part of the grantee match.

(i) A grantee shall account for project funds using generally accepted accounting principles and practices that shall be recorded by the grantee in a separate account.

(j) A grantee shall keep all financial records, including invoices and canceled checks, that support the project costs claimed by the grantee and shall make these available to the department for inspection for 6 years after receipt of final payment, unless longer retention is directed by the department in writing. The grantee shall maintain records about the disposition of the supplies, equipment, and capital assets purchased with a grant under this chapter and make such records available to the department upon request.

(k) The grantee may request partial reimbursements with the frequency shown in Table 2 of this chapter, for grant eligible costs. Partial reimbursement requests shall be accompanied by progress reports detailing activities that have taken place during the time period for which the grantee is seeking reimbursement, and documentation for the costs being claimed. A grantee is limited to the cumulative amount of partial reimbursements, by subprogram. See Table 2 in this chapter for maximum partial reimbursement amounts.

(L) The department may require the grantee to submit final payment claims within 6 months after the project end date. Final payment requests shall be accompanied by a final report detailing activities that have taken place during the entire project period and documentation for the costs being claimed.

(m) The department shall withhold up to the percent identified in Table 2 of the grant award for final payment, subject to a determination that the project's final report and required audits have been completed satisfactorily.

(n) The department may require the grantee to submit all information gathered for a project funded under this chapter and final report to the department in electronic format as part of the final report.

(o) A grantee shall agree to have an annual audit performed on federal funds received from a state or federal agency in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, also known as "Uniform Guidance," and WI State Single Audit Guidelines issued by Wisconsin department of administration, state controller's office, if a grantee receives federal or state grant funds totaling at least \$750,000 during the grantee's fiscal year.

(p) The grantee shall have sole control of the method, hours worked, and time and manner of any performance under this agreement other than as specifically provided in this chapter. The department takes no responsibility of supervision or direction of the performance of the agreement to be performed by the grantee or the grantee's employees or agents. The department further agrees that it will exercise no control over the selection and dismissal of the grantee's employees or agents.

(q) Any grantee who subcontracts or hires an agent to undertake any portion of a project funded under this chapter shall first enter into a professional services agreement with the contractor or agent using a form provided by the department. Agents include professional service providers, consultants, contractors, engineers, designers, attorneys, information technology specialists, planners, educators, and other professionals carrying out activities funded under this chapter.

(r) The department may inspect the job site or premises for the purpose of ensuring that performance is progressing or has been completed in compliance with the grant agreement.

(s) The department may require the grantee to install and enforce an organization code of conduct that lays out expectations and guiding principles for appropriate workplace behavior.

The grantee shall implement its code of conduct when dealing with department staff, volunteers, local elected officials, employees, service providers and customers. Should the grantee fail to comply, all obligations of the department under an agreement may be terminated.

(t) The department may include other conditions in the grant agreement, at its discretion.

(2) SPECIAL CONDITIONS. The department may include special conditions in a grant agreement funded under this chapter. Special conditions typically include requirements that a federal agency has placed on the department through a federal grant and that are passed through to third parties that receive and use those federal funds. Special conditions may also include unique water quality or biological requirements or reporting requirements that are deemed appropriate by the department. A grant project that includes fee simple or easement land acquisition will also include special conditions related to the department's evaluation of offers to purchase, appraisals, land surveys, and other real estate costs approved by the department.

(3) ESSENTIAL CONDITIONS. The department shall include essential conditions in a grant agreement funded under this chapter. Essential conditions for land acquisitions projects are specified in s. 281.71 (1), (2), (3) and (5), Stats. Failure to comply with any essential condition will result in the title of the subject property being vested to the state.

NR 193.14 Maintenance and disposition of assets. A grantee may purchase supplies, equipment, or capital assets with a grant provided under this chapter, consistent with limitations for each subprogram and federal guidelines, if applicable. The grantee is required to maintain a list of supplies, equipment, and capital assets purchased with grant awards and to provide the list to the department upon request. The grantee shall follow the maintenance and disposition procedures of supplies, equipment, and capital assets purchased with a grant under this chapter as follows:

(1) SUPPLIES. The grantee may retain, sell, or dispose of project supplies after the end of a grant project and may retain sale proceeds.

(2) EQUIPMENT. The grantee shall maintain equipment purchased with a grant under this chapter in good working order during the term of the grant agreement, including use of proper fuel, routine maintenance, and fresh batteries.

(a) Equipment purchased with a grant under this chapter may not be sold or donated during the life of the grant.

(b) The grantee may retain, sell, or donate the equipment and may retain sale proceeds. Sales to state of Wisconsin employees are prohibited unless items are sold at announced public sales or auctions. Acceptable methods for sale or donation include any of the following:

1. Competitive bid.
2. Public auction.
3. Open negotiated and documented sale.
4. Offer to the public at a fixed sale price.
5. Donation, transfer, or sale to another grantee qualified to receive a grant under this chapter.
6. Sale for salvage value.
7. Donation to a scrap yard or business when the equipment has no or limited value.

(3) CAPITAL ASSETS. The grantee is required to maintain capital assets purchased with a grant under this chapter in good working order during the term of the grant agreement, including use of proper fuel, routine maintenance, and fresh batteries. Other conditions pertaining to capital assets include the following:

(a) Capital assets purchased with a grant under this chapter may not be sold or donated during the life of the grant.

(b) Capital asset costs are depreciated over the useful life of the item and prorated for the length of the grant period.

Note: The following method may be used to determine depreciation value. Suppose water sampling equipment costs \$5,999 to purchase. Since the value is greater than \$5,000 the equipment is considered a capital asset and shall be depreciated for grant purposes. Suppose

further that the water sampling equipment has a useful life of 10 years. For a grant award with a 3-year term, the maximum amount that can be paid with a grant under this chapter is: $(\$5999 \text{ divided by } 10) \times 3 = \$1,799.70 \times \text{DNR cost-share rate}$.

(c) All of the following disposition procedures apply to capital assets purchased with a grant funded under this chapter:

1. If the per-unit fair market value of the capital asset at the end of the grant project is less than \$5,000, the grantee may retain, sell, or donate the capital asset and may retain sale proceeds. Fair market value is the price agreed upon between a willing buyer and a willing seller, with neither being required to act, and both having reasonable knowledge about the make, model, age, condition, maintenance history, and other relevant facts about the capital asset. Sales to state of Wisconsin employees are prohibited unless items are sold at announced public sales or auctions. Acceptable methods for sale or donation are the same as for equipment, as described under s. NR 193.14 (2) (b).

2. If the per-unit fair market value of the capital asset at the end of the grant project is \$5,000 or more, repayment may be owed to the department if the capital asset is to be sold or donated to another party and the department cost-shares on the entire cost of the capital asset. Acceptable methods for sale or donation of capital assets after the life of the grant agreement are the same as for equipment, as described under s. NR 193.14 (2) (b).

3. If a grantee purchased a capital asset in part with federal funding, the capital asset is subject to federal law for purposes of asset disposal.

(4) DISPOSITION. A grantee shall maintain records about the disposition of the supplies, equipment, and capital assets as a condition of the grant agreement and make such records available to the department upon request.

NR 193.15 Required deed restrictions. Grant funded practices may require deed restrictions to ensure that current and future landowners are aware of the department's interest in the property.

(1) COST-SHARE AGREEMENTS. If the land on which a project is installed has an operation and maintenance period of more than 10 years, but the land is not owned by the grantee, the grantee shall enter into a cost-share agreement with the landowner and record the cost-share agreement at the register of deeds office in the county where the property is located. The grantee shall use the cost-share agreement template provided by the department. This paragraph does not apply to Healthy Lakes projects.

Note: The cost-share agreement template is available from the department's Surface Water Grant Program webpage.

(2) GRANT AGREEMENTS. (a) If the land on which a project is installed has an operation and maintenance period of more than 10 years, and the land is owned by the grantee, the grantee shall record the grant agreement at the register of deeds office in the county where the property is located. This paragraph does not apply to Healthy Lakes projects.

(b) When a grant under subch. VII is awarded for fee simple or conservation easement land acquisition, the grantee shall record the grant agreement at the register of deeds office in the county where the property is located. All obligations, terms, conditions and restrictions imposed by the grant agreement shall be deemed to be covenants and restrictions running with the property and shall be effective limitations on the use of the property from the date of recording of the grant agreement and shall bind the grantee and all successors and assigns in perpetuity.

NR 193.16 Professional service agreements. Any grantee who subcontracts or hires an agent to undertake any portion of a project requiring more than \$1,000 of grant funding under this chapter shall enter into a professional services agreement with the contractor or agent prior to the commencement of any contracted work using a form provided by the department. Agents include professional service providers, consultants, contractors, engineers, designers, attorneys, information technology specialists, planners, educators, and other professionals carrying out activities funded under this chapter. The department may request a copy of the fully executed professional services agreement at any time during the grant period. A grantee shall submit to the department the fully executed professional service agreement with its request for final payment.

NR 193.17 Project quality assurance requirements. (1) A grantee shall ensure that its staff, contractors, volunteers, and service providers conducting grant activities funded under this chapter complete minimum training requirements established by the department specific to the grant subprogram prior to the start of the project. A grantee shall contact department lake or river coordinators for information on training requirements and any department-sponsored training opportunities.

(2) A grantee shall ensure that all analyses conducted as part of the project funded under this chapter are performed by the Wisconsin state laboratory of hygiene or a laboratory approved by the department. A grantee may contact the department for a list for DNR approved laboratories.

Note: A grantee interested in laboratory certification requirements should consult ch. NR 149 for more details.

(3) A grantee is required to implement department-approved quality assurance and quality control, or QA/QC, plans during the project period. If established department-approved QA/QC protocols do not exist, a grantee collecting physical, biological, or chemical data may be required to submit a QA/QC plan to the department for approval prior to beginning a project funded under this chapter. QA/QC plans shall include details on the data and information to be collected, data quality standards for precision, accuracy, completeness and validation, and a plan for data management.

(4) A grantee shall submit to the department all data and other information acquired as part of a project funded under this chapter in a format and frequency specified by the department in the grant agreement.

(5) A grantee shall employ program-approved protocols established and published by the department when they exist. If protocols are not available for proposed activities, an applicant may be required to submit a plan for department approval prior to beginning a project funded under this chapter.

Note: Examples of program-approved protocols include: aquatic plant baseline monitoring, aquatic plant pre/post treatment monitoring, wetland plant community assessment

and wetland pre/post treatment monitoring, water clarity and chemistry monitoring, aquatic invasive species early detection, prevention, and monitoring, lake classification and assessment, macroinvertebrate community monitoring, water quality monitoring, and social science.

NR 193.18 Grant payments. The department may make payment to the grantee, including advance payments, escrow payments and reimbursements, in the following manner:

(1) Grants awarded under this chapter are generally administered on a reimbursement basis. A grantee shall incur and pay all costs before requesting a partial or final payment from the department.

(2) At the written request of the grantee, the department may distribute to the grantee an advance grant payment, up to the maximum percentage identified in Table 2, as soon as the grant agreement has been signed by the grantee's authorized representative and has been returned to the department.

(3) The department may only reimburse costs incurred within the time period and identified in the grant agreement. An approved grant application becomes part of a grant agreement by reference. Total grant payments may not exceed the grant award identified in the grant agreement.

(4) The department shall withhold up to 25% of the grant award for the final grant payment. Final payment shall not be issued by the department until final costs have been reviewed, final reports have been approved, if appropriate, and the department has made a determination that the project has been satisfactorily completed. Table 2 summarizes grant payments by grant type.

(5) All project costs are subject to a post audit process that may take place after partial and final payments are issued by the department. If a determination is made that payments were made in error, the grantee may be required to make a repayment to the department.

TABLE 2
Surface Water Grant Program Payment Table

This table summarizes eligibility for partial payments, the maximum frequency of payments, the maximum number of partial payments allowed during the life of the grant, and the percentage of the grant award that is required to be retained for final payment for each subprogram under this chapter.

Grant Category	Grant Subprogram	Partial Payments Allowed	Frequency of Partial Payments	Maximum Number of Partial Payments	Percentage of Grant Award Retained for Final Payment
Education and Planning Projects	All education & planning subprograms	No	Not applicable	Not applicable	25%
Lake & River Management Projects	Lake & River Fee Simple Land and Easement Acquisition	No	Not applicable	Not applicable	25%
	Wetland Restoration Incentives	No	Not applicable	Not applicable	0%
	All subprograms other than land acquisition	Yes	1 per year	4	10%

NR 193.19 Grantee reporting. A grantee shall report all data and information acquired as part of a project funded under this chapter to the department in a format and with a frequency specified by the department in the grant agreement. The department may, up to 4 times per year, request progress reports detailing activities completed during the reporting period in addition to progress reports submitted with partial reimbursement requests under s. NR 193.04. At the same time as the grantee submits the final payment request, they shall submit to the department a final report, suitable for distribution to and use by the public, in an electronic format specified by the department. The department may use the final reports and associated images for reporting and promotional purposes.

NR 193.20 Variances. The department may approve, in writing, a variance from a requirement of this chapter upon the written request of a grantee if the department determines that a variance is essential to effect necessary grant actions or program objectives and where special circumstances make a variance in the best interest of the program. Before approving a variance, the department shall consider factors such as good cause and circumstances beyond the control of the sponsor. The department may not approve variances from statutory requirements, appraisal, environmental inspection, and audit requirements.

SUBCHAPTER II – EDUCATION AND PLANNING

NR 193.30 Purpose. (1) The purpose of this subchapter is to establish procedures for awarding cost-sharing grants for implementing a lake management planning grant program. Subprograms under this subchapter include Education and Planning.

(2) Education projects provide information and education to increase understanding of surface waters and aquatic ecosystems. Projects provide information on one or more of the following topics: surface water quality, the quality of aquatic ecosystems, the quality of aquatic life, the use of surface waters, the use of aquatic ecosystems, methods to protect their quality, and formation of river management organizations.

(3) Planning projects enhance the assessment of surface water quality and aid in the selection of activities that benefit surface waters, including those that protect water quality, improve water quality, prevent pollution from entering waterbodies, protect aquatic ecosystems, and improve aquatic ecosystems.

NR 193.31 Education. Education projects eligible for funding under this subchapter include:

(1) **SURFACE WATER INFORMATION AND EDUCATION.** Surface water information and education projects accumulate new information or existing information or both, on surface waters or aquatic ecosystems or both, and disseminate it to broaden public understanding. Eligible projects may focus on any of the following: surface waters, aquatic ecosystems, aquatic life, water quality, the quality of aquatic ecosystems, and methods to improve or protect them.

(2) **AQUATIC INVASIVE SPECIES INFORMATION, EDUCATION AND INSPECTION PROGRAMS.** Aquatic invasive species information and education projects accumulate new information or existing information or both, about aquatic invasive species, and disseminate it to broaden public understanding. Eligible projects may focus on any of the following: aquatic invasive species, aquatic invasive species identification, threats posed by aquatic invasive species, effects on aquatic ecosystems, measures to prevent spread, and best practices for population control, and watercraft and equipment inspection. Projects shall be consistent with the department's statewide education strategy for preventing and controlling

invasive species. Watercraft and equipment inspection projects shall comply with all of the following:

(a) Watercraft and equipment inspectors shall be trained by attending a department-approved training workshop and receiving program materials approved by the department prior to project initiation.

(b) Trained inspectors shall conduct inspections of watercraft and equipment, at waterbody access points. Inspectors shall collect and report data, provide education, and collect or report specimens that may be aquatic invasive species.

(c) Trained inspectors shall accumulate a minimum of 200 inspection hours per waterbody access point or a minimum of 200 inspection hours per 2 access points when public activity on waterbodies is the highest, including during weekends, holidays, fishing tournaments, and other special events.

(d) Data collected through an inspection shall be reported through the statewide watercraft inspection database. These reports shall serve as the final report as required in s. NR 193.19.

Note: "Clean Boats Clean Waters" is the department's watercraft inspection program

(3) TRAINING AND SKILL DEVELOPMENT. Training and skill development projects assist a grantee in developing and conducting workshops or other training and education programs for volunteers and participants in a lake or river planning or management project.

(4) ORGANIZATION DEVELOPMENT. Organization development projects provide information and education about developing an organization's capacity to carry out planning and management projects. Eligible projects may also assist a grantee in the formation of goals and objectives for a planning or management project. Grants may be used to support other projects approved by the department that will aid in the protection or improvement of surface waters or aquatic ecosystems, or both.

(5) RIVER MANAGEMENT ORGANIZATION FORMATION. River management organization formation projects provide programs and materials to assist in forming or meeting

the conditions of a qualified river management organization, or both. Eligible activities may include one or more of the following: training, education, facilitated planning programs, facilitated workshops, or development, printing and dissemination of information, surveys, educational materials, or brochures to attract members.

NR 193.32 Planning. (1) ELIGIBLE PROJECTS. Planning projects eligible for funding under this subchapter are:

(a) *Preparing to plan.* Preparing to plan projects assist a grantee in taking steps toward developing a management plan for one or more of the following: a lake, a watershed, an aquatic plant community, or aquatic invasive species. Eligible projects include one or more of the following activities: determine a waterbody's condition; outline goals, expectations and priorities for management; inventory existing data and identify data gaps when they exist; identify problems needing management; inventory historical management actions; and assess planning needs to define the scope and scale of a future planning or management project.

(b) *Organization and community assessment.* Organization and community assessment projects assist in the protection or improvement of surface waters by focusing on the social dimensions of collaborative planning or management projects. Eligible projects shall employ social science tools and methods to accomplish one or more of the following activities: identify stakeholders; determine a community's capacity to complete a planning or management project; assess a community's readiness to plan or manage; identify how a community uses, values or perceives a waterbody or aquatic ecosystem, or both; and evaluate how those uses, values or perceptions have changed over time. Examples of social science tools and methods include surveys, interviews, focus groups, assessments, case studies, and oral histories.

(c) *Water quality assessment.* Water quality assessment projects evaluate data on surface water quality and report findings. Eligible projects shall collect new water quality data or assemble existing water quality data, or both, and shall include an assessment of waterbody condition following the Wisconsin Consolidated Assessment and Listing Method, or WisCALM. Eligible activities include a quantitative evaluation of the degree that pollution sources contribute to water quality problems. Examples of pollution sources include point source, nonpoint source, and internal loading.

(d) *Watershed assessment.* Watershed assessment projects determine the causes and sources of pollution in the watershed that are contributing to water quality problems. Eligible activities shall include one or more of the following: data collection and analysis; modelling; and other work to understand watershed land cover and land use likely to affect the quality of surface waters and aquatic ecosystems now, in the future, or both. Watershed projects may also include assessing groundwater quality and quantity, and assessing contributions of septic systems to water quality problems.

(e) *Aquatic life assessment.* Aquatic life assessment projects evaluate data on aquatic life and report findings. Eligible projects shall collect new data or assemble existing data, or both, on an aquatic plant community, fish community, shoreline habitat or other aquatic life feature approved by the department. Eligible activities may include one or more of the following: species-specific identification; an assessment of quality or condition; mapping; population analysis; other studies or assessments necessary for control of aquatic invasive species; and the protection, improvement, or both, of aquatic ecosystems

(f) *Management plan development.* Management plan development projects result in a new or updated management plan for one or more of the following: a lake, a river, a watershed, an aquatic plant community or aquatic invasive species prevention. Management plans shall include recommendations for management activities that are likely to protect or improve the condition of surface waters or aquatic ecosystems, or both. Examples of management plans include watershed plans, nine key element watershed plans, basin plans, TMDLs, lake management plans, river management plans, county land and water plans, aquatic plant management plans, and aquatic species control plans. Plan recommendations may be submitted to the department for a determination of eligibility as specified under s. NR 193.56 before the recommendations may be considered eligible activities for a management plan implementation grant under s. NR 193.52. Approval of management plan development projects for payment under this subchapter does not constitute department approval of the plan or any of its recommendations for the purposes of s. NR 193.56.

(g) *Pre-implementation planning.* Pre-implementation planning projects result in final design and specifications for a lake management plan implementation project as specified under

s. NR 193.52. Eligible activities include one or more of the following: site assessment, monitoring, modelling, environmental assessment, the drafting of engineering plans, the drafting of construction plans, landscape design, and site-specific specifications.

(h) *Other assessments and planning projects.* Other projects and activities necessary for developing or updating a management plan may be approved by the department. Examples of other assessments and planning projects include review, evaluation or development of ordinances and other local regulations related to the control of pollution sources, recreational use, or other human activities that may affect natural beauty or other components of a lake or river ecosystem.

(2) EDUCATION ACTIVITIES IN PLANNING PROECTS. No more than 20% of a planning project may consist of education activities listed under s. NR 193.31.

NR 193.33 Management plan approval. Upon completion of a management plan under this subchapter, a grantee may submit the plan to the department to determine the eligibility of recommendations and activities for a management grant as outlined in s. NR 193.56. The department may approve none, some, or all the recommendations for implementation. Once the department has approved one or more recommendations, an applicant is eligible to apply for a management grant under s. NR 193.52 or 193.63 (2).

SUBCHAPTER III – COUNTY LAKE GRANTS

NR 193.40 Purpose. The purpose of this subchapter is to establish procedures for implementing a lake classification grant program as provided for in s. 281.69 (5), Stats. Grants made under this program will allow counties to assist the department to update and improve lake information, classify lakes by use, and implement activities that will protect water quality and lake ecosystems.

NR 193.41 Eligible grantees. Only counties are eligible to apply for a county lake grant.

NR 193.42 Eligible projects. One or more projects may be included in a single grant application. The following projects are eligible for a county lake grant:

(1) LAKE MAPPING AND INFORMATION PROJECTS. Eligible lake mapping and information projects will update and improve existing state lake information in the county, establish consistency with state and county lake information systems, and identify lakes in need of protection. A lake mapping and information project shall follow program-approved protocols. A county shall work cooperatively with the department to determine a lake protection strategy that has the following elements:

(a) A county shall first verify and where necessary update basic lake information. Updated or new state lake information that may impact a regulatory program shall be approved by the department before becoming official lake information. The following information is considered basic lake information:

1. The size, depth and shape of the lake.
2. The size of the lake's watershed.
3. The quality of the water in the lake.
4. The location and capacity of public access.
5. The presence of aquatic invasive species.

(b) A county shall identify lake protection priorities for the purposes of implementing a county lake protection project. Lakes that are identified as protection lakes are those that are attaining state eutrophication water quality standards. For the purposes of identifying county lake protection projects, counties shall classify a subset of those lakes that are most vulnerable to degradation, considering all of the following factors:

1. The lake's current use, or potential for the lake to be overused for recreational purposes.
2. The current or potential development of land surrounding the lake.
3. The potential for the lake to suffer from nonpoint source water pollution.

4. The type and size of the fish and wildlife population and the extent of their habitats in and around the lake.

5. The presence or risk of introduction of aquatic invasive species.

(c) All projects shall include a list of proposed activities for lake protection and a strategy for their implementation.

(d) A county may classify lakes for the purposes of implementing activities for which they, or cooperating jurisdictions, have existing statutory authority. This includes working with other local governments on lake use classification for managing recreational uses. Nothing in this section shall be interpreted to grant new authority to counties for managing lakes and shorelines. Classification and the resulting protection activities may not result in lowering existing state standards designed to protect lakes and shall be consistent with all existing state classifications and regulatory programs.

Note: State lake information includes Wisconsin Lakes PUB-FH-800, the Surface Water Integrated Monitoring System (SWIMS), and the 24K Hydrolayer.

(2) COUNTY LAKE PROTECTION PROJECTS. A county that has completed a lake mapping and information project is eligible to apply for a grant under this subchapter to assist in the implementation of lake protection activities. Eligible projects are planning and management projects that have been identified in this chapter.

SUBCHAPTER IV – SURFACE WATER MANAGEMENT

NR 193.50 Purpose. The purpose of this subchapter is to establish procedures to award cost-sharing grants to implement a lake management grant program and a river protection grant program. Grants awarded under this subchapter shall implement protection or improvement projects, or both, in surface waters or aquatic ecosystems, or both. Subprograms under this subchapter include healthy lakes and rivers, surface water restoration, management plan implementation, and ordinance development.

NR 193.51 Shoreland, littoral, in-stream and wetland projects. (1) PURPOSE. Shoreland, littoral, in-stream, and wetland projects are necessary to restore aquatic life or protect

or improve water quality. Projects under this section shall occur at one or more of the following locations:

(a) Within 1,000 feet of the ordinary high water mark of a lake.

(b) Within 300 feet of a river, or to the landward side of the flood plain, whichever distance is greater.

(c) Within a wetland that is part of a lake or river ecosystem.

(2) HEALTHY LAKES AND RIVERS PROJECTS. A grant for a healthy lakes and rivers project will assist the grantee with implementing prescribed best practices to create healthy lakes and rivers, subject to all of the following conditions:

(a) Appropriate best management practices as determined and approved by the department.

(b) The cost-share rates for best practices are defined by the department.

(c) Healthy lakes and rivers projects shall follow the operation and maintenance requirements as prescribed by the department, and the grantee shall have control of the property through a landowner contract such that the areas being restored with funds under this chapter remain in conservation use for a period of 10 years.

(d) No more than 10% of the DNR cost share of a healthy lakes and rivers project may include project management and technical assistance activity costs that are not implementation costs. The 10% is calculated based on the DNR cost share of the grant award and cannot exceed the funding cap.

Note: A copy of the statewide Healthy Lakes and Rivers Plan may be obtained directly from the Healthy Lakes website at <https://healthylakeswi.com/>

(3) SHORELAND PROJECTS. These projects will assist a grantee in carrying out department-approved best management practices to improve surface waters or aquatic ecosystems or both. Eligible activities include one or more of the following best practices

conducted in compliance with the general and practice-specific standards outlined in s. ATCP 50.61:

(a) Critical area stabilization.

(b) Diversions.

(c) Filter strips.

(d) Grade stabilization structures on artificial or non-navigable streams, channels, and gullies.

(e) Riparian buffers.

(f) Streambank or shoreline protection or both, in conjunction with revegetation, soil bioengineering, or upland erosion control.

(g) Water bars, sediment and water basins, pervious pavement, rain gardens, vegetation planting and urban pollution and runoff control projects, and impervious area removal within 35 feet of the ordinary high-water mark.

(4) LITTORAL AND IN-STREAM PROJECTS. These projects will assist a grantee to protect or improve, or both, the littoral or in-stream areas, or both, of waterbodies. Eligible activities include: structures providing fish and wildlife habitat, dam removal, culvert redesign and replacement, other fish passage barrier removals and planting of native aquatic plants.

(5) WETLAND RESTORATION PROJECTS. These projects shall occur on hydric soils and shall restore or enhance, or both, a prior converted or existing wetland. A grantee shall implement best practices outlined in ch. ATCP 50 and follow the associated U.S. department of agriculture natural resources conservation service practice standards for Wisconsin for wetland restoration or wetland enhancement, or both. Eligible activities include tile breaks, ditch plugs and fills, and water level manipulation.

(6) WETLAND RESTORATION INCENTIVES. These incentives support wetland restoration projects for a grantee that has completed a comprehensive land use plan that includes

a wetland enhancement or restoration project. Grants of \$10,000 each will be awarded to eligible recipients with no cost share required. Funds shall be used for wetland restoration as specified in s. NR 193.51 (5). Eligible recipients shall include counties, towns, villages, qualified lake associations, town sanitary districts, public inland lake protection and rehabilitation districts, and other local governmental units, as defined in s. 66.0131 (1) (a), Stats., that are established for the purpose of lake management. Surface water management organization and qualified non-resident entities are not eligible for grants under this subsection.

(7) PROJECT DESIGN PLAN. In addition to the application elements specified in subchapter I, all applications for projects funded under subs. (3), (4), and (5) shall include a project design plan that includes the following elements to be considered during application review and ranking:

(a) Projects requiring design and engineering shall submit an installation plan and design documents, including one or more of the following: schematics, installation plan with schedule, site plans, plans for monitoring, landscape design, and vegetation planting lists.

(b) A maintenance plan describing how the project will be managed to maintain its conservation value.

(8) CONTROL OF PROPERTY. The grantee shall have control of the property, through ownership, easements, deed restrictions, or contracts such that the sites being restored with grant funds under subs. (3), (4), and (5) remain in conservation use for 20 years unless otherwise approved by the department.

Note: A copy of the statewide Healthy Lakes and Rivers Plan may be obtained directly from the Healthy Lakes website at <https://healthylakeswi.com/>. Copies are also on file at the offices of the department and legislative reference bureau.

NR 193.52 Management plan implementation projects. Projects eligible for funding under this subchapter shall protect or improve surface waters or aquatic ecosystems and shall implement one or more recommendations approved by the department as specified in s. NR 193.56 and detailed in a management plan. These projects are intended to implement activities not listed or eligible under s. NR 193.51 or where total project costs exceed that section's

funding limits. Eligible activities shall be those that are necessary to implement the recommendation. Once the department has approved a recommendation and activity, the applicant may apply for grant funding. For projects under this section, the grantee shall have control of the property on which management actions take place through ownership, easements, deed restrictions, or contracts such that the areas where grant-funded implementation activities occur remain in conservation use for 20 years unless land is state-owned or as otherwise approved by the department. Eligible activities include:

(1) All projects listed in s. 193.51(3), (4), and (5).

(2) Other watershed management and nonpoint source pollution prevention and control practices specified in ch. NR 120.

(3) Lake restoration activities where the department has determined any of the following conditions exist:

(a) The external sources or causative factors of the problems to be remediated have been or very likely will be controlled to the best practical extent possible prior to or by the restoration activities.

(b) The proposed activities have a high likelihood of successfully meeting the management plan objectives or state water quality standards.

(4) Other activities approved by the department based on an approved recommendation in a management plan, including any of the following:

(a) Management staffing grants to support implementation. Applications shall include a position description including goals, objectives and tasks and percent time assigned to each activity. For staffing requests of over 2,000 hours, the department may require semi-annual reviews of performance.

(b) Applied management studies that implement a department-approved recommendation found in a management plan. These projects require a research-based approach designed to improve understanding of surface water management.

(c) Landowner incentive projects to encourage participation in surface water quality or aquatic habitat management activities. Incentive payments may include incentives for conservation best practices or participation incentives for landowners or businesses engaging in a department-approved initiative. Applications shall include a justification for payment or other incentives, a description of the payment process and documentation, and expected outcomes.

NR 193.53 Ordinance development projects. Ordinance development projects assist a grantee with the development of local regulations or ordinances to protect or prevent degradation of water quality or aquatic life or both. Examples include boating or other recreational use restrictions and land use ordinances. Ordinance development projects shall include all of the following:

(1) The development of an ordinance that is presented for adoption by the grantee or another appropriate jurisdiction.

(2) An assessment of the administrative and enforcement capacity and costs to implement the ordinance.

NR 193.54 Ineligible activities. Activities not eligible for funding under this subchapter include: those that are necessary to comply with a regulatory action, including wetland mitigation projects or shoreland mitigation projects; routine chemical treatments or mechanical harvesting of aquatic plants; maintenance and operation of aeration systems, storm water detention ponds, and facilities; dam repair, modification, or operation; dredging; and installation, operation, or maintenance of sanitary sewers or private onsite waste disposal systems.

NR 193.55 Ineligible costs. Ineligible costs include labor and material for stairs, walkways, paths, piers, home improvement costs such as gutters and paint, or other structures not necessary to complete the project.

NR 193.56 Management activity eligibility determination. (1) A request for a determination of eligibility for a management plan implementation project under this subchapter or an aquatic invasive species control grant under subch. V may be submitted to the department at any time. Requests for an eligibility determination for a future grant cycle must be submitted at least 60 days prior to the grant application deadline. The request shall include a complete copy

of the management plan and a cover memorandum describing the activities proposed for funding and citing the location of the supporting recommendation in the plan. The department may determine none, some, or all of the recommendations and activities are eligible for a management grant. Once the department has approved one or more recommendations, an applicant is eligible to apply for a management grant.

(2) When determining eligibility for a management plan implementation project, the department shall consider the extent to which the activities recommended in a plan are likely to do one or more of the following: prevent the pollution of surface waters, protect surface waters, protect aquatic ecosystems, improve surface waters, and improve aquatic ecosystems. The department shall consider the extent to which the content presented in the plan supports the implementation of the recommended management activities. The department shall complete its review within 45 days of the receipt of the plan and may request additional information, or approve all, some, or none of the plan recommendations. The department shall state the basis for denying the approval of any of the plan recommendations submitted for eligibility in writing to the entity submitting the plan.

(3) Only activities in a current management plan will be considered for an eligibility determination. A current management plan for aquatic plants or aquatic invasive species shall have a completion date no more than 5 years prior to submittal for an eligibility determination. All other management plans shall be considered current if the completion date is 10 years prior to submittal for an eligibility determination.

SUBCHAPTER V – AQUATIC INVASIVE SPECIES CONTROL

NR 193.60 Purpose. The purpose of this subchapter is to establish procedures for awarding cost-sharing grants for control of aquatic invasive species, or AIS, in surface waters. These projects are intended to manage AIS populations at all stages of growth and reproduction through the application of integrated pest management, or IPM.

NR 193.61 Definitions. In addition to definitions provided in s. NR 193.03, the following definitions apply to this subchapter:

(1) “Established population” means a substantial reproducing population of aquatic invasive species that is not a pioneer population.

(2) “Integrated pest management” means an effective ecosystem-based management strategy that focuses on long-term control of pests or their damage, or both, considering all of the available pest control practices. Integrated pest management, or IPM, projects shall be informed by current, comprehensive information on pest life cycles and the interactions among pests and the environment. Practices employed in an IPM project shall include more than one of the following: prevention, biological control, biomanipulation, nutrient management, habitat manipulation, substantial modification of cultural practices, pesticide application, water level manipulation, mechanical removal, population monitoring,, and other available pest control methods approved for grant-funded projects. Pesticide application may be approved only when other available pest control methods are considered, and when pesticide applications are conducted with the goal of removing only the target species.

(3) “Pioneer population” means a small population of an aquatic invasive species in the early stages of colonization verified within the past 5 years. A pioneer population of a rooted invasive aquatic plant species is less than 3 acres in size or less than 3% of the habitable area of the lake, stream reach, or wetland, whichever is greater.

(4) “Prohibited species” has the meaning given in s. NR 40.02 (41).

(5) “Restricted species” has the meaning given in s. NR 40.02 (46).

(6) “Verified” means an aquatic invasive species that has been identified and its location confirmed through the department’s verification and response protocol.

NR 193.62 Eligible grantees. In addition to the eligible grantees under subch. I, any person owning property or who has a waterbody located entirely on their property that has a verified prohibited species is eligible to apply for an AIS control grant under this subchapter.

NR 193.63 Eligible projects. Projects eligible under this section include:

(1) **EARLY DETECTION AND RESPONSE PROJECTS.** Early detection and response projects will assist applicants in the planning and management of verified populations of

prohibited species and verified pioneer populations of restricted species that are not included in a current management plan, with the following conditions:

(a) Only one grant may be awarded under this subsection for any one population of a restricted aquatic invasive species.

(b) The grant period for early detection and response projects shall begin on the date the project is authorized by the department.

(c) Projects may include development of a management plan, watercraft inspection in accordance with s. NR 193.31 (2), portable boat washing stations, and other activities approved by the department.

(d) The department may authorize control activities under this subprogram when it is likely that populations can be removed or significantly reduced and managed at low densities.

(e) The department may specify control measures, monitoring and reporting activities for projects funded under this subprogram.

(2) ESTABLISHED AQUATIC INVASIVE SPECIES CONTROL PROJECTS.

Established aquatic invasive species control projects shall assist a grantee in controlling established populations of aquatic invasive species by implementing department-approved activities recommended in a management plan following a determination of eligibility described in s. NR 193.56. Established populations are not pioneer populations. Eligible projects include any of the following:

(a) *Small-scale population management projects.* Small-scale population management projects shall assist a grantee to maintain low abundance and frequency of a small AIS population or further reduce it in size. These projects may be used to manage a small population resulting from a successful large-scale population management project. These projects are intended to implement limited management activities for the continued suppression of the target species on a localized scale where the management actions are unlikely to affect the entire lake, stream reach, or wetland.

(b) *Large-scale population management projects.* Large-scale population management projects shall assist a grantee in conducting activities that will result in long-term, multi-season control of the target species in a substantial portion of a lake, stream reach, or wetland.

(3) AIS RESEARCH AND DEMONSTRATION PROJECTS. AIS research and demonstration projects are intended to be a cooperative activity between a grantee and the department. Such projects shall be designed to increase scientific understanding of the ecological and economic implications of aquatic invasive species and their management and to assess experimental and innovative techniques for their prevention, containment and control. Procedures for applications and grant awards include the following:

(a) Proposals for research projects shall include the goals and objectives of the project, a brief description of the methods, estimated costs and a timeline for completion.

(b) The department may solicit research proposals through a request for proposal process.

(c) Prior to each biennium the department will consult with the invasive species council on needed aquatic invasive species research.

(d) The department has sole discretion to award a grant under this subprogram and will work with the sponsor to develop a study design and grant application.

(e) No more than \$500,000 shall be awarded annually for projects under this subchapter.

NR 193.64 Ineligible projects. Activities not eligible for project funding under this subchapter include: chemical treatment or mechanical harvesting of aquatic plants for the purpose of seasonal nuisance relief, management techniques that are not expected to result in effective control of the target species, or maintenance and operation of aeration systems or mechanical devices used to suppress aquatic plant growth.

NR 193.65 Other conditions. (1) INTEGRATED PEST MANAGMENT. Projects funded under this chapter shall employ an integrated pest management strategy. The department may require monitoring activities and an assessment of management outcomes as part of that strategy. The department shall approve the use of pesticides in projects only when other available pest control methods are considered and when treatments are conducted with the goal of

minimizing impacts to non-target organisms. The department may deny a project if it determines the proposed management poses a significant risk to human health, nontarget organisms, or the environment, or is determined to be inconsistent with the principles of IPM.

(2) PUBLIC BOATING ACCESS. Activities for the control of a prohibited species are considered resource protection services and do not require public boating access under s. NR 1.91 (1) (L). Control of other invasive species requires public boating access under s. NR 1.91 (1) (L).

SUBCHAPTER VI – LAKE MONITORING AND PROTECTION NETWORK CONTRACTS

NR 193.70 Purpose. The purpose of this subchapter is to establish eligible activities, qualifications, and procedures for the administration of contracts for the creation and support of a statewide lake monitoring and protection network. Contracts under this section will be used to provide for the collection and reporting of quality-assured data on the use and condition of lakes and lake ecosystems, protect lakes through watercraft inspection and the early detection of aquatic invasive species, and provide technical assistance to persons and public entities engaging in aquatic invasive species prevention and control as provided in this chapter.

NR 193.71 Definitions. In addition to definitions provided in s. NR 193.03, the following definitions apply to this subchapter:

(1) “Network monitor” means a person who may volunteer or receive compensation to participate in the network, conducts network activities, and meets all of the following qualifications:

(a) The person is registered with the department as a user of the department’s Surface Water Integrated Monitoring System, or SWIMS.

(b) The person participates or agrees to participate in the lake monitoring and protection network.

(c) The person completes a department-approved training program on the collection, reporting, and interpretation of water quality, aquatic invasive species, or watercraft inspection data, or all three.

(2) “Network” means the Lake Monitoring and Protection Network established by the department to implement the purposes of this section and includes citizen monitors, network monitors, network participants, and network supporters.

(3) “Network supporter” means the public groups or persons contracting or volunteering with the department to provide the goods and services necessary for the operation and maintenance of the network.

(4) “Public group” includes any eligible grantee in this chapter and any subdivisions of state or federal government including the U.S. postal service.

NR 193.72 Establishing the network. The department may work to establish and maintain the network statewide including any of the following activities:

(1) Provide protocols for conducting network activities.

(2) Register and provide technical support to network monitors participating in monitoring, inspection and prevention programs and reporting data in SWIMS.

(3) Allocate funds to network supporters according to an annual allocation plan that includes the total amount available and the total amounts allocated by county.

Note: The annual allocation plan will be published in guidance on the Surface Water Grant Program webpage.

(4) Annually assess statewide lake monitoring and protection needs and coverage and enter into contracts with network supporters to conduct any of the following activities:

(a) Train network monitors and coordinate lake monitoring, AIS monitoring, watercraft inspection, and AIS prevention programs and data entry into SWIMS.

(b) Purchase and distribute supplies and equipment necessary for network activities.

- (c) Provide shipping and handling of samples and specimens and laboratory analysis.
- (d) Enter data, program software, or conduct other data management services necessary for tracking and reporting network monitors and activities.
- (e) Analyze, report and disseminate reports and results.
- (f) Provide technical assistance to a grantee for AIS prevention and control.
- (g) Assist applicants with AIS grant application development and submission.
- (h) Coordinate communication among network monitors and expand their capacity to conduct network activities.
- (i) Conduct any network activity.
- (j) Any other service approved by the department.

NR 193.73 Network activities. Activities in the network will implement established lake monitoring and protection programs or follow other approved methods and procedures. Network activities include any of the following:

- (1) Participation in the Citizen Lake Monitoring Network.
- (2) The collection and reporting of chemical, biological or physical information about lakes and lake ecosystems including water levels, lake ice extent and duration, aquatic plants, and shoreline habitat conditions following department-approved methods.
- (3) Aquatic invasive species early detection monitoring.
- (4) Participation in the Clean Boats Clean Waters watercraft inspection, boater education program and decontamination programs.
- (5) Participation in the Purple Loosestrife Biocontrol program.
- (6) Other AIS prevention campaigns and lake protection activities as approved by the department.

NR 193.74 Qualifications for participation as a network monitor. The department may require a network participant to comply with one or more of the following conditions:

(1) Attend department-sponsored training and demonstrate requisite skill in conducting monitoring or prevention protocols, or both.

(2) Have access to the equipment necessary to carry out monitoring or prevention protocols, or both.

(3) Have access to a computer with internet connection to transmit data.

(4) Have the necessary safety equipment and training to perform the tasks in a safe manner.

(5) Meet performance and conduct standards specified in the volunteer agreement or in a contract under this section if applicable.

NR 193.75 Network monitor registration. (1) All network monitors shall register with the department or an agent of the department.

(2) A person desiring to become a network monitor shall request participation in the lake monitoring and protection network from the water quality monitoring or watercraft inspection coordinator indicating the waterbody they are interested in monitoring and the type of monitoring they prefer to conduct.

(3) The water quality monitoring or watercraft inspection coordinator shall consider available resources and department monitoring priorities and determine whether to accept the request.

Note: The water quality monitoring and watercraft inspection coordinators are statewide positions funded by the department and located at the College of Natural Resources, University of Wisconsin, Stevens Point, WI 54481-3897. The coordinators can be contacted by phone at (715) 346-2116 or email at uwexplakes@uwsp.edu. Form 3200-101 will be provided by the department at the completion of training.

(4) A persons accepted by the department as a network monitor shall complete a release of claims form 3200-101 and provide the water quality monitoring or watercraft inspector coordinator with the information necessary to add them to the volunteer monitoring network database.

SUBCHAPTER VII – LAND ACQUISITION

NR 193.80 Purpose. The purpose of this subchapter is to establish procedures for the administration of grants for the acquisition of property in fee simple or for conservation easements if the purchase will substantially contribute to the protection or improvement of the lake's or river's water quality or its natural ecosystem, as authorized in s. 281.71, Stats.

NR 193.81 Applicability. This subchapter applies to eligible recipients as defined in s. 281.69 (3) (a), Stats., for lake protection acquisition projects and s. 281.70 (4) (a), Stats., for river protection acquisition projects that wish to apply for grants for the acquisition of property in fee or for a conservation easement to protect or improve lakes, rivers, and their ecosystems.

NR 193.82 Definitions. In addition to definitions provided in s. NR 193.03, the following definitions apply to this subchapter:

(1) "Essential provision" means conditions of the grant agreement that are required by statute.

(2) "Grantee acquisition match" means the dollar amount of the project cost not funded with a grant under this subchapter. Eligible sources of grantee acquisition match may include cash from the grantee; funds generated by local, non-department state or federal governments; grants or contributions from foundations, businesses, private individuals, or nonprofit organizations; property contributions from a third party if the contribution is made within 3 years of the acquisition of the property and is considered by the department to be eligible for a grant under the same program; property acquired by the grantee within 3 years of the acquisition if the property was not purchased with state funds and is considered by the department to be eligible for a grant under the same program; and property value donated by the property owner.

NR 193.83 Eligible and Ineligible Projects. (1) ELIGIBLE PROJECTS. The department may award grants under this chapter to eligible applicants for any of the following projects:

(a) Fee simple acquisition of all rights of a property that will protect a lake or river water quality or their ecosystems where the negotiations between the grantee and landowner were conducted on a willing seller, willing buyer basis.

(b) The purchase of perpetual conservation easements for some of the rights of the property that will protect a lake or river's water quality or its ecosystems where the negotiations between the grantee and landowner were conducted on a willing seller, willing buyer basis.

(2) INELIGIBLE PROJECTS. The department may not award grants under this subchapter for ineligible acquisition projects, including any of the following:

(a) A property that is subject to a reversionary right or has restrictions or covenants that would prevent the property from being managed for purposes consistent with this subchapter.

(b) Property acquired through condemnation.

(c) A property where the negotiations between the grantee and landowner were not conducted on a willing seller, willing buyer basis.

(d) Property on which a dam is located.

(e) A property acquired more than one year before a land acquisition grant application is submitted to the department.

(f) Properties for which an environmental inspection report shows the property contains undesirable environmental conditions or liabilities or potential liability or hazards that are unacceptable to the department.

(g) Projects that do not provide for public access to the property, unless the department determines restricting access is necessary to protect wild animals, plants, or other natural features.

(h) Relocation costs.

Note: Because the department requires willing seller willing buyer negotiations, there is no use of eminent domain and there will be no need for relocation costs.

NR 193.84 General grant conditions when land is acquired under this subchapter. In addition to the provisions specified in s. NR 193.13, the following provisions apply when land is acquired under this subchapter:

(1) Grant funding provided by the department for fee simple or conservation easement acquisition may not exceed the DNR cost-share percentage for the subprogram under which an application is accepted. Maximum DNR cost-share percentages may be found in Table 1 in s. NR 193.05.

(2) The department may require the applicant to inform the landowner, in writing, that the applicant may apply for a surface water grant.

(3) The department may not make an award under this subchapter for acquisition by a local unit of government or tribe for land that is outside the boundaries of the local unit of government or tribe unless the local unit of government or tribe in which the land is located approves the acquisition.

(4) For both fee simple and conservation easement acquisitions, the grantee shall develop and submit to the department a land management plan. The plan will become part of the grant agreement and shall be recorded at the county register of deeds along with the grant agreement.

(5) The grantee shall notify the department of any change in status or purpose of the grantee as it relates to the acquisition and management of fee title or conservation easements purchased with funds under this chapter.

(6) If the grantee's organization dissolves, all title, rights and interest held by the grantee in and to the property purchased under this subchapter shall vest in the state, without the necessity of reentry, unless a transfer to another eligible grantee under is approved by the department.

(7) The grantee shall agree to maintain and manage property acquired with a grant under this subchapter in accordance with the provisions, conditions, and descriptions in the grant agreement and in accordance with an approved land management plan.

(8) A grantee that fails to abide by the terms of the grant agreement that results in inconsistent use of the property or facility or impairment of the conservation values may not be eligible to apply for a future grant under this chapter until the grantee corrects the impairment and the department determines that the grantee is once again operating in accordance with the terms and conditions of the original grant agreement.

(9) A grantee acquiring property through title in fee simple or rights to a property via a conservation easement shall ensure that the property provides for public access as provided in s. 281.71, Stats., unless the department determines, and documents in writing, that the property may be closed to public access to protect wild animals, plants or other natural features.

(10) The grantee shall ensure that the holder of any mortgage or land contract on conservation easement property subordinates its rights to the terms of the conservation easement before grant payment is made by the department. The grantee shall send written proof of this subordination to the department before the department issues a final payment under this subchapter.

(11) The grantee and subsequent owners of property acquired with a grant under this subchapter shall acquire and manage the property in accordance with all applicable state, local and federal laws, rules and regulations.

(12) The grantee shall acknowledge the state's assistance in acquiring fee title or easement ownership of a property and provide notice of public access by placement of signs adequate to give notice. The department may provide one-time cost-sharing to an eligible grantee for signage consistent with this requirement, with cost-share not to exceed \$1,000. The area of a sign shall be at least 108 square inches, with length and width each not less than 10 inches, and the sign shall be made of a durable substance. The grantee shall place signs at major access points to the property acquired with a grant under this chapter.

(13) Upon prior notice to the grantee by the department, the grantee shall provide the department access to the property to monitor compliance with the grant agreement. In the case of conservation easements, it is the responsibility of the grantee to notify and decide with the landowner when monitoring will occur.

(14) With regard to the use and enjoyment of property purchased with funds under this subchapter, a grantee may not discriminate against any person on the basis of age, race, creed, color, handicap, marital status, conviction record, arrest record, gender, national origin, ancestry, sexual orientation, or military status.

(15) Funds awarded under this subchapter shall be subject to the execution of a grant agreement between the department and the grantee. The grantee shall record the grant agreement at the register of deeds in the county in which the property is located.

(16) If the grantee violates any condition of the grant agreement identified as essential pursuant to s. 281.71, Stats., and fails to correct the violation within 6 months after receiving written notification of the violation from the department, the grantee is in violation of the grant agreement, and all title, right and interest held by the grantee in and to the property shall vest in the state without the necessity of reentry or legal judgment.

NR 193.85 Additional conditions. The following additional conditions are required for projects when a conservation easement is being purchased with funds under this subchapter:

(1) The department shall have access to property on which a conservation easement is acquired with a grant under this subchapter, in a reasonable manner upon prior notice to the grantee and the landowner, to monitor compliance with the conditions of the grant agreement. The conditions of that access shall be contained in the conservation easement agreed to by the landowner.

(2) The grantee shall prepare a conservation easement to be approved by the department. The department may require an applicant to use a standard conservation easement template when developing its easement document.

Note: Copies of the department's easement standards and guidelines are available from the DNR, Bureau of Community Financial Assistance, Box 7921, Madison, WI 53707.

(3) For conservation easements acquired with a grant under this subchapter, the grantee may not convert or approve conversion of land encumbered by the conservation easement to uses inconsistent with the easement or the grant agreement without prior approval of the department.

(4) When a grant is awarded for acquisition of a conservation easement, the grantee shall prepare a baseline document, approved by the landowner and available to the department for inspection, before grant payments are made.

(5) The grantee shall monitor conservation easements, both acquired and donated, at least once per calendar year, comparing the condition of the property with baseline documentation, to ensure that the provisions of the conservation easements are being satisfied. The grantee shall enforce the easement provisions with landowners. The grantee shall submit to the department a report documenting annual monitoring and any enforcement measures taken, as necessary.

NR 193.86 Grant calculation. The department may award a grant under this subchapter for up to 75% of the total project costs, but the award amount may not exceed the maximum grant award amount per subprogram.

(1) The grantee is required to obtain and submit to the department an appraisal for fee simple or conservation easement projects, both for parcels to be purchased and parcels that will be used as grantee acquisition match. The grantee shall order appraisals in accordance with department guidelines, and the appraisal shall be subject to department review and approval.

Note: The department's appraisal guidelines are available from the DNR, Bureau of Community Financial Assistance, Box 7921, Madison, WI 53707.

(2) The department may order a second appraisal if the property presents a difficult appraisal problem, if the first appraisal is unacceptable under department established criteria, or if the value of the parcel exceeds \$350,000.

Note: The department encourages a grantee considering applying for grant funding for fee simple or conservation easement acquisition to contact the department before ordering an

appraisal. Instructions provided to the appraiser will impact the scope and quality of the appraisal and, therefore, impact the grant award amount.

(3) In addition to items listed in s. NR 193.07, property donated to the grantee or purchased by the grantee without state funds may be used as a grantee acquisition match. The following conditions apply to donated property used as grantee acquisition match:

(a) The purchased or donated match property shall also be eligible for funding under this subchapter.

(b) With approval of the department, a grantee may use a portion of the accepted appraised value of a donated property as part or all of the grantee acquisition match of the acquisition cost of the subject property. The value of contribution of property shall be determined by appraisal as specified in the department's appraisal guidelines.

Note: The following example describes how to determine available grant match from donated property. Presume an applicant applies for a grant to purchase property with a value of \$100,000 as determined by a DNR-approved appraisal. The lakes subprogram provides 75% cost-sharing; maximum grant award would be \$75,000. Grantee would need to provide \$25,000 as the grant match. If applicant is using donated land as match, the donated land shall also meet program criteria, and the department shall also approve the appraised value of the donated land to be used as match. Both the subject property and the donated property become part of the program when donated land is used at match.

Presume DNR-approved value of the donated property is \$70,000. Maximum grant under the Lakes subprogram would be \$108,750 $(= (\$75,000 + \$70,000) \times 75\%)$. However, the applicant cannot receive a grant that exceeds amount of actual cash outlay. Since there was \$0 cost to the applicant for donated land, the donated value is applied to raise the maximum grant award to the cash costs of \$100,000. The remaining donated value of \$36,666.67 $(= \$70,000 - ((\$100,000/75\%) - \$100,000))$ not applied to the grant to raise the award to cash costs is not available for the applicant to use as grant match to a future grant project under this program.

(c) The amount that may be used for grantee acquisition match shall equal the fair market value as determined by the department for an accepted appraisal. The grant payment may not

exceed the amount of cash needed for the purchase. The value of the donated property not used as match in the original project is lost and not available to the grantee for match on future applications under this chapter.

(d) Grantee match property shall be encumbered in perpetuity by a grant agreement and subject to the same conditions and restrictions that would encumber fee simple or conservation easement land acquired with a grant under this chapter.

NR 193.87 Grant award. (1) The department shall issue a grant agreement before it awards any funds under this subchapter. The grantee shall fully execute the grant agreement prior to disbursement of any state funds for the purchase of property.

(2) A grant awarded under this subchapter may be terminated by the department for violation of any term or condition of the grant agreement. If the grant is terminated, any interest in or title to the property shall vest in the state.

(3) When a grantee is purchasing either fee simple or conservation easement property, the department may distribute the entire grant award to a non-interest-bearing escrow account, subject to department-approved title insurance commitment, to be released upon completion of an insured closing and conveyance of the property to the grantee. If the closing has not occurred within 15 days from the date when funds were distributed to the escrow account, the department shall notify the escrow agent to return the grant funds to the department.

NR 193.88 Grant agreements for acquisition projects. (1) In addition to the general grant agreement conditions identified under s. NR 193.13, all of the following essential provisions shall be added to a grant agreement awarded under this subchapter:

(a) The grantee shall not convert or allow to be converted any use of the property other than that specified in the grant agreement without the prior written approval of the department.

(b) The grantee shall not convey any interest in the property to a third party nor allow any leases, permits, or encumbrances without the prior written approval of the department. The department may take actions necessary to avoid the placement of liens, judgments or encumbrances against the property.

(c) The party to whom the property is transferred shall be an eligible applicant under this chapter and shall agree to assume the responsibilities and limitations of the terms and conditions of the grant agreement.

(d) The grantee shall make property tax payments on time and keep taxes current unless property taxes are not required.

(e) The grantee may not close a property acquired with a grant under this chapter to the public unless the department determines, and documents in writing, that closure is necessary to protect species of plants, wild animals, or other natural features.

(f) The grantee shall manage the property in accordance with the land management plan approved by the department.

(2) The grant agreement shall recognize the state's interest in the property acquired by the grantee, for both the subject property and donated match property when applicable, and ensure that the grantee shall provide adequate land management and maintenance, or, in the case of easements, the grantee shall monitor and enforce the conditions of the easement, in accordance with provisions contained in the grant agreement and in a land management plan approved by the department. The grantee shall declare the state's interest in the property on the warranty deed or other appropriate instrument of conveyance recorded in the appropriate county register of deeds office, using language provided by the department. The grant agreement shall be recorded in the office of the register of deeds in the appropriate county.

(3) All obligations, terms, conditions and restrictions imposed by the grant agreement shall be deemed to be covenants and restrictions running with the property and shall be effective limitations on the use of the property from the date of recording of the grant agreement and shall bind the grantee and all successors and assigns in perpetuity.

(4) The department may include additional conditions and restrictions in the grant agreement.

NR 193.89 Conversions. If a grantee converts property to an inconsistent use not approved by the department, the grantee shall return the property to the use specified in the grant

agreement within 6 months of written notification of the inconsistent use by the department, or the grantee shall replace the property with a different property that is approved by the department. The department's approval of replacement property shall include consideration of at least equal value, acreage, and benefit consistent with the surface water grant program for which funding was originally approved.

SECTION 5. NR 195 is repealed.

SECTION 6. NR 198 is repealed.

SECTION 7. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 8. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

BY _____

Preston D. Cole, Secretary

(SEAL)